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# OFFICE AND DUTIES
OF
# NOTARIES PUBLIC.

# A TREATISE

ON THE LAW RELATING TO THE

# OFFICE AND DUTIES

OF

# NOTARIES PUBLIC

Throughout the United States,

With Forms of Affidavits, Acknowledgments, Conveyances, Depositions, Protests, and Legal Instruments.

BY

JOHN PROFFATT, LL. B.

Author of Curiosities and Law of Wills, a Treatise on Trial by Jury, etc.

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# PREFACE.

If I would justify the existence of this book, I could point to the fact that there is no other covering the same ground or supplying the same information. While it may be an advantage to an author, as far as novelty is concerned, to be the first to treat of a certain subject, it devolves upon him, however, a weightier degree of care and responsibility in preparing, arranging, and developing in systematic order the topics of his treatise.

Recognizing this duty in writing upon a new subject, the author has given the utmost attention to the systematic arrangement and connection of the various topics composing this treatise, and has been particularly careful to make the work easy of reference and convenient for examination. But a book can hardly claim an excuse for its existence simply on the ground of novelty, or as being the pioneer in a new field. The author therefore does not claim recognition simply because it is the first on this general subject, but prefers to base its claims to notice on the ground of its practical utility, and its adaptation to the wants of those for whom it was written.

It might appear, at first sight, impossible to treat of the duties and powers of Notaries in a general work adapted to various States; but on examination and comparison of the statutes, it will be found that their duties and powers are more uniform in our several States than many would suspect. Thus a general treatise became practicable, and the author found it possible to classify and arrange his subject from a general standpoint. Where, however, statutes have abridged or enlarged the powers of Notaries in any State, the author has not failed to draw attention thereto, giving reference to such statutes.

The subjects embraced in this work comprise fully and specific-

ally whatever pertains to the office of a Notary throughout the United States. The general duties of Notaries in this country are to take acknowledgment of deeds and other written instruments, to take affidavits and depositions, and to make protest of negotiable paper. Where Notaries are not permitted to exercise all of these, or where they are intrusted with additional powers, the fact has been duly noticed.

The author has throughout relied upon *authority*, supporting his statements by citations of cases numbering at least one thousand, so that the work may not only be a manual, but a reliable reference to all who have occasion to investigate any of the several subjects embraced in it.

The subject of Acknowledgment of Deeds has been carefully treated, and the various decisions in reference thereto examined and digested; and this chapter of the work, it is hoped, may prove not only advantageous to the practical conveyancer, but useful to the lawyer, as its propositions are fully supported by reference to well-considered cases. In the forms, there are given the style of acknowledgment for each State and Territory of the Union; and forms for the private acknowledgment of married women are given under the States where such are required.

The chapter on Negotiable Paper has received the author's most careful attention, and it has been his aim to make it complete, practical, and useful to Notaries, to whom are confided the responsible duties of protesting negotiable paper. He has, at the same time, endeavored to extend its utility by citations of cases, so that it may be of use to the practicing lawyer, and especially to bankers, who will readily find therein information which they will have occasion every day to seek.

The chapter on Notarial Acts as Evidence the author believes will be found of great advantage, not only to notaries but to the legal profession. It is the first time that the cases on this subject have been brought together, classified, and digested. The importance of this subject demanded of the author the most careful attention and closest examination. It has therefore been his endeavor to make it complete, reliable, and practical.

The forms will, perhaps, be the most useful and practical part of the work. They have been carefully selected and compared, and it is hoped will be found useful and reliable. Over two hundred of these forms are given, comprising forms of acknowledgment, depositions, protests, ship protests, and forms of legal instruments in general use.

It is believed, from the large number of Notaries throughout the United States, and the responsible duties they are called upon to discharge, that this work will supply them with that information which will enable them to discharge their duties safely to themselves and efficiently to the public. The author now commits the work to their favor and patronage, and feels assured that, though it be the first attempt to compile a general treatise on the subject adapted to all sections of the country, it will not prove imperfect or unreliable, and, while not infallible, will be found free from any grave errors.

J. P.

San Francisco, March, 1877.

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# CHAPTER I.

## HISTORY OF THE OFFICE.

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§ 9. Effect of Reformation as to office and duties

**§ 1. Origin remote.**—Notaries as professional officers seem to have existed from a period of remote antiquity; though their office and duties were not similar to those of the present day. It is easy to conceive that, at a time when but few were capable of putting their agreements in writing, a demand should have existed for a class of officers who might be able to embody and attest in a written instrument the terms of a contract.

It is for this reason we so frequently meet with a class of officers of this kind in all historical writings. Under various names we find them described in ancient history; but the generic word *Scribæ* seems to be applicable to all such persons.[1]

A French legal writer thus speaks of such public officers: "Ils furent nommés *Scribæ*, titre commun à tous ceux qui savent écrire; *Cursores*, ou *Logographi*, parcequ'ils écrivaient aussi vite que la parole; *Notarii*, parcequ'ils écrivaient par notes; *Tabularii*, ou *Tabelliones*, parcequ'ils écrivaient sur des tablettes; *Argentarii*, pour designer ceux qui ne recevaient les contrats que pour quelques négociations d'argent, telles que prêt, dépôt."[2]

**§ 2. Under Roman law.**—A writer on Roman law asserts that the word *Scriba* was applied in ancient times to the clerk

[1] A notary was anciently a scribe that only took notes or minutes, and made short draughts of writings, and other instruments, both public and private. Burn, Eccles. Law. Vol. 3, p. 1.

[2] Merlin, Repertoire de Juris. Vol. 21, p. 317.

of the Court, in contradistinction to the *Exceptor*, who was employed by private persons. He says further that "the terms *Notarius* and *Actuarius*[1] designated a peculiar sort of employee; but in the fourth and fifth centuries these terms changed, and the word *Exceptor* applied to every chancery, *Notarius* and *Tribunus* being reserved for the imperial chancery alone—hence *Tabellio* came to signify what *Notarius* originally implied, namely, such persons as prepared contracts, wills, and the like, without a public sanction, in the beginning of the sixteenth century."[2]

It is under the term *tabellio* we find the officer described in Roman law who most nearly corresponds to our modern notary.[3] These *tabelliones* assumed a position of great importance in Roman law as public officers.

**§ 3. Functions of the tabelliones.**—At first, these officers were occupied in a professional capacity, and had only a public character in so far as they offered their services to the public at large in drawing up instruments of agreement, legal documents, and papers to be presented to the Courts of Law or other authorities of State. They established themselves in the most frequented and public resorts, where the public might more easily obtain their services in this capacity; and even at the present day such officers are found in Italian cities, offering their services in a similar capacity.

In Rome, their offices were found around the *Agora* and *Forum*, and hence the name under which they are sometimes designated, as *tabelliones forenses*.[4]

Their number and importance increased in such a degree that the State began to take a recognition of them, and to place them under a certain sort of supervision and regulation. They

[1] Il existait encore une autre espèce d'officiers appel's *Actuarii*. Chaque gouverneur de province avait auprès de lui un de ces derniers officiers pour recevoir en registrer et sceller les acts, tels que les émancipations, adoptions, manumissions, et testamens." Merlin, Repertoire de Juris. Vol. 21, p. 318.

[2] Colquhoun, Roman Law, Sec. 86.

[3] They were called *tabellio*, probably from the *tabulæ*, or tables or plates covered with wax, used by them instead of paper, See Corpus Juris Civilis, Novell. 23; Du Cange, Glossarium ad Scriptores mediæ et infimæ Latin tatus, title *Notarii* and *Tabellio*.

[4] Colquhoun, Roman Law, Sec. 2349, Novell. 44.

formed themselves into a sort of guild or company, under a presiding officer called a *primicerius*. And it appears from a "Constitution" of Diocletian that a tariff of fees was established for them.

**§ 4. Their acts were not accorded full public authenticity** in the Roman law; it was still necessary that witnesses should be adduced to fully authenticate their notarial acts. But these acts commanded a certain degree of weight and public authenticity. There were three species of instruments to which the civil law attributed different degrees of credit. There were those specially designated public instruments, such as were deposited in the public archives set apart for that purpose—*Quæ in publico deponuntur in archio aut Grammatophylacio;*[1] and these instruments proved themselves—no witnesses were necessary to establish them as evidence. The writings which were accorded the next degree of credit, as evidence, were those taken by a notary in the presence of two witnesses. They were called *instrumenta*, or *documenta publice celebrata, publice confecta*, or *scripturæ forenses*, because they were taken by notaries established about the Forum. The signature of the notary did not confer on them authority, and they were not given the credit of public instruments, for they did not prove themselves. *Testimonium publicum non habebant.* If the writing of the party were objected to, the notary must be called, and in case of his death, the attesting witnesses.[2]

Such writings as were made without the intervention of a notary—*quæ non habebant supplementum Tabellionis*—were required to be signed by the parties in the presence of three witnesses of credibility, and who were acquainted with the parties.[3]

[1] Dig. Lib. 48, Tit. 19, 1, 9, Sec. 6.

[2] Burge, Colonial Law, Vol. 2, p. 700.

The rule of the canon law was that one notary was equivalent to the testimony of two witnesses. Burn, Eccles. Law, Vol. 3, p. 2.

[3] In the Civil Law, by the 73d Novel of Justinian, the mode of authenticating instruments is carefully pointed out, and the functions of the *tabelliones* in this respect provided for.

In Cap. 2, it is provided: Sed et si quis aut mutui instrumentum, aut alterius cujuspiam faciat, et noluerit hoc in publico confeteri, quod et in deposito, definivimus, non ex ipso videatur credibile quod scributur super mutuo documen-

**§ 5. When acts obtained public recognition.**—Under the Roman law, it had been the custom for a judge, or public functionary, to have close by him a sort of secretary, generally denominated in later times a *cancellarius*, whence our word "chancellor" is derived. Such officers were also attached to the bishops, after Christianity was established in the empire. These officers discharged important functions in drawing up agreements, documents, and especially wills, which were very frequently drawn up before the bishops by their notaries, who, for a long period, on the continent, (as well as formerly in Scotland) had committed to them, as a peculiar and responsible part of their functions, the attestation of wills.[1] But, after the decadence of the secular jurisdiction of the bishops, and the limitation of their powers, the notary began to do on his own behalf what he formerly did as an attached ministerial officer; and before him were executed and attested the most formal and solemn documents, such as wills, bonds, and important contracts.

It was in the time of Charlemagne that the acts of notaries were first invested with public authority. In one of his capit-

tum, nisi etiam testium habeat præsentium fide dignorum non minus trium; ut sine veniat et proprius subscriptionibus attestentur: sive alii quidam testificentur, *quia præsentibus eis confectum* est documentum; fidem causa ex utroque percipiat, etiam literatum examinatione penitus non repulsa, sed sola non sufficiente augmento autem testium confirmanda.

In Cap. 5, it is pointed out how the *tabelliones* shall cause instruments to be carefully drawn up: Sed et si instrumenta publice confecta suit: licet tabellionum habeant supplementum, adjiciatur et eis antequam compleantur (sicut dictum est) testuim ex scripto præsentia.

[1] There is a remarkable instance given, in Stair's Decisions of the Scotch Court of Sessions, of the punishment of two notaries for improperly attesting a will. The case is reported as Stuart *contra* Smith, Nov. 20th, 1680, at page 804, in the following quaint style: "It was further alledged that the defunct made a testament, and named Wardlaw executor and universal legatur to her, upon his having maintained her many years. It being answered that the testament being subscribed by two nottars is false, the defunct never having given command to subscribe it, nor heard it read, but that a blank paper was subscribed by the nottars, and was filled up, *ex post facto*, after the defunct's death, which being found relevant, and the nottars and witnesses being examined, they did depose that the nottars subscribed a blank paper, and that the defunct was not sensible, nor able to speak, but that her hand was lifted by another to touch the pen, and that the testament was not filled up till some days after her death. The Lords found, not only the testament null, as being blank, but false and without warrand, and deposed both the nottars, and gave warrand to the sheriff to send both their persons to Edinburgh, to be set upon the cock-stool, with a paper upon their brows."

ularies, in the year 803, he desired his deputies to nominate notaries in every place; and in another, in the year 805, he obliged every bishop, abbot, and count to have each a notary.[1] At a later time, it became the sole prerogative of kings to appoint notaries; but, by degrees, the Pope of Rome assumed the same right.[2]

§ 6. **Notaries in England** were known to have exercised their powers before the Norman Conquest. During the reign of Edward the Confessor, whilst Reinbald was chancellor, some manors and lands were granted by the king to the Abbot of Westminster, by a charter, the concluding clause of which shows it to have been written and attested by a notary named Swardius: "Notarius, ad vicem Reinbaldi regiæ dignitatus cancellarii, hanc chartam scripsi et subscripsi," etc.[3]

Notaries, as public officers, are alluded to in the petition, in Norman French, of the House of Commons of the twenty-first year of the reign of Edward III, thus: "Et sur ce furent assignez per my Engleterre certeines Gentz de prendre Procuratours des Cardinalx, and d'autres Aliens, Subdelegatz and lour Notairs."[4]

We find notaries named in the Act of Parliament, commonly known as the Statute of Provisors of the twenty-seventh Edward III, St. 1, c. 1, passed in 1353, and in the Act of the sixteenth Richard II, Chap. 5, Sec. 2, in 1392, commonly called the Statute of Præmunire. The Statutes of Præmunire had for their object the abolition of the papal power in England, so far as it pretended to appoint to ecclesiastical benefices without the king's consent.[5] The statute declared certain pains and penal-

[1] "Ce fut Charlemagne qui, le premier, investit les notaires du pouvoir d'imprimer à leur actes le caractère de l'autorité publique. Il nomme dans ses capitulaires *judices chartularii*. Dans un de ces capitulaires de l'an 803, il veut que ses envoyés nomment dans chaque lieu des notaires; dans un autre de l'an 805, il oblige les évêques, les abbés, les comtes, d'avoir chacun un notaire." Merlin, Repertoire de Juris. Vol. 21, p. 317.

[2] The Pope assumed the right to appoint to all *faculties;* and consequently, as a notary was included in such, he assumed the right of appointment. In England, he was deprived of this power by a statute in the reign of Henry VIII. See Edes v. Bishop of Oxford, Vaugh. 23.

[3] 4 Institutes, c. 8, p. 78.

[4] Rot. Parl. 21 Edw. III, p. 172.

[5] See Barrington on Statutes, p. 279.

ties against parties who should be concerned in any proceeding of this kind, in defiance of the king's authority, and declared that all "they, their *notaries*, procurators, abettors, fautors, and counsellors" should suffer certain penalties.

**§ 7. Mentioned in reign of Henry V.**—At a very early period in England, notaries were employed to attest or authenticate instruments of more than ordinary importance or solemnity; an instance of this is given in the ninth year of the reign of Henry V, when two notaries are mentioned in the Parliamentary Rolls of that year as attesting an instrument of importance relating to the affairs of Lucie, Countess of Kent: "Ensealee desoutz le seal d'armes du dite Countesse and desoutz le tesmoignance de deux notaries mettantz lour signes a mesme l'escript de le quele les paroles cy ensuent, etc."[1]

In the reign of Henry VI, in the year 1430, there occurred a trial by battle, or single combat, one of the former barbarous modes of trial, before the king, in which one of the parties was John Upton, a notary of Feversham. The following is taken from an account, by Stow, of the combat:

"The foure and twentieth of January, a battel was done in Smithfield, within the lists, before the King, betweene two men of Feversham, in Kent, John Upton, notary, appelant, and John Downe, gentleman, defendant; John Upton put upon John Downe, that he and his compiers should imagine the King's death, the day of his coronation: when they had long fought the King tooke up the matter and forgave both parties."[2]

**§ 8. Acts of a solemn nature executed before notaries.**—Apart from the ordinary duties of notaries, as attesting the execution of wills, contracts, bonds, and the like, there were sometimes executed before them acts of a high and solemn nature, in order to give them more of an impressive and authentic character. Thus it happened that they were called upon to officiate in drawing up and authenticating treaties. In the enumeration of the army of King Edward IV, designed for the invasion of France in 1475, we find there mentioned a doctor of laws and public notaries engaged to accompany the

[1] 4 Rot. Parl. 9 Henry V, p. 144.

[2] Stow's Annals, p. 371

troops, and the remuneration paid them is also stated. "Magistro Johanni Coke, Doctori Legum pro vadiis suis ad 2s. per diem, et pro vadies cujusdam Notarii Publici ad 12d. per diem." [1]

That notaries were employed in foreign countries to protest or record dissents in respect of public or state measures, is proved by the well-known historical fact of Francis I, of France, having made a protest in 1526, before notaries at Madrid, declaring that his consent to the treaty of Madrid should be considered as an involuntary deed, and deemed null and void, as having been obtained from him during his captivity, consequent upon the battle of Pavia.[2]

In the "Merchant of Venice" we see how well established the custom was in Shakespeare's time to execute instruments of a solemn nature before a notary.

*Shylock.*— This kindness will I show:
Go with me to a notary, seal me there your single bond.
* * * * *
*Antonio.*—Yes, Shylock, I will seal unto this bond.
*Shylock.*—Then meet me forthwith at the notary's.[3]

And Massinger, writing in 1633, thus alludes in a satirical way to the duty and power of a notary:

"Besides, I know thou art
A public notary, and such stand in law
For a dozen witnesses; the deed being drawn, too,
By thee, my careful Marrall, and delivered
When thou wert present, will make good my title." [4]

**§ 9. Effect of Reformation as to office and duties.**—In England, no material change was produced in the position and functions of notaries by the Reformation, except that the power of granting faculties, which hitherto belonged exclusively to the Pope, was assumed by King Henry VIII, and a Court of Faculty was created, which was attached to the Archbishop of Canterbury, to which Court the appointment of notaries was delegated.[5]

After this, it is apparent, the character and functions of a

[1] 11 Rymer's Fædera, 848.
[2] Robertson's Charles V, Vol. 1, p. 388.
[3] Act I, Scene 3.
[4] By Sir Giles Overreach, in Act V of "A New Way to pay Old Debts."
[5] Brooke, Office and Practice of a Notary, p. 6.

notary were no less considered, as appears from a provision respecting the recording and attesting of wills in certain Courts in the reign of James I, of which an account is thus given:

"In the Canon of 1st James I, (1603) respecting wills proved in peculiar and inferior Courts, after reciting that deans, archdeacons, prebendaries, etc., etc., exercising ecclesiastical jurisdictions, having no known or certain registers, or public places to keep their records in, by reason of which many wills, 'upon the death or change of such persons and their private notaries,' miscarry and cannot be proved, it is therefore ordered that all such possessors of peculiar jurisdiction shall, once in every year, exhibit into the public registry of the bishop of the diocese, or of the dean and chapter under whose jurisdiction the peculiars are, every original testament by them proved in their several peculiar jurisdictions, or a true copy of every such testament, 'examined, subscribed, and sealed, by the peculiar judge and his notary.'"[1]

In Scotland, before the Reformation, the duties of notaries were generally discharged by the clergy; but by the Act of 1584, they were precluded from exercising other callings than clerical duties, excepting the making of testaments; and even this was soon afterward removed and laymen were exclusively appointed to the office.[2]

[1] Gibson, Codex Juris Ecclesiastici Anglicani, Vol. 1, Tit. 24, p. 470.
[2] Brooke, Office and Practice of a Notary, p. 7.

## CHAPTER II.

### APPOINTMENT OF NOTARIES.

§ 10. Executive generally appoints.
§ 11. In England, appointed by the "Court of Faculties."
§ 12. Appointment in United States.
§ 13. Qualifications for appointment.
§ 14. Period for which appointed.
§ 15. Notaries in France.

**§ 10. Executive generally appoints.**—As a general rule, the executive power in every State is intrusted with the power and authority to appoint and commission notaries. We have already adverted to the practice in England before the Reformation, when the Pope exercised the right to appoint notaries, as included under his general power of appointing to certain faculties, as it was termed. In the American States, and throughout the Continent of Europe, the executive exercises the privilege of appointment.

**§ 11. In England,** notaries are still appointed by the "Court of Faculties," which is stated to be "a Court, although it holdeth no plea of controversie."[1] There is a rule that, in order to practice as a notary in London, or within ten miles thereof, a person must have served for seven years as an apprentice under a qualified notary in actual practice, and if within three miles, he must also be a member of the Scriveners' Company. To practice at a greater distance than ten miles from London, a person must be admitted upon the production of a certificate of clerkship of five years to a notary, or an attorney and notary.[2]

The following is a form of a commission for a notary practicing out of London, taken from Brooke:

"By Divine Providence, Archbishop of Canterbury, Primate of all England, and Metropolitan, by authority of Parliament, lawfully empowered for the purposes herein written: To our

[1] Brooke, Office and Practice of a Notary, p. 9. [2] 6 and 7 Vict. Chap. 90.

beloved in Christ, C—— D——, a literate person, now residing at Liverpool, in the County of Lancaster, health and grace: We being willing, by reason of your merits, to confer on you a suitable title of promotion, do create you a Public Notary, previous examination and the other requisites to be herein observed having been had; and do, out of our favor toward you, admit you into the number and society of other notaries, to the end that you may henceforward, in all places, (except within the jurisdiction of the incorporated Company of Scriveners of London) exercise such office of notary, hereby decreeing that full faith ought to be given, as well in judgment as thereout, to the instruments to be from this time made by you, the oaths hereunder written having been by us, or our Master of the Faculties, first required of you, and by you taken.

"Provided always, that these presents do not avail you anything, unless duly registered and subscribed by the Clerk of her Majesty for Faculties in Chancery. Given under the Seal of our Office of Faculties at Doctors' Commons, this ——— day of ———, in the year of our Lord one thousand eight hundred and ——, and in the year of our translation.

"[Seal.] J. H. T. MANNERS SUTTON,
"Registrar."

**§ 12. Appointment in the United States.**—In a majority of our States, the governor has the power of appointing notaries, without the nomination being submitted to or passed upon by the senate. In some places, the appointment is made after a previous recommendation of the applicant. Thus, in Illinois, the governor appoints by and with the consent of the senate, and none are to be appointed except on a petition of fifty legal voters of the place where the applicant resides.[1] In Indiana, notaries are appointed by the governor upon a certificate of qualifications and moral character from the judge of the Circuit or Common Pleas Court of their counties respectively.[2] So in Ohio, the governor appoints, but each applicant is to produce a certificate from a judge of the Court of Common Pleas, residing in the same county and district, stating that the applicant is of good moral character, and an elector in the State.[3]

[1] Rev. Stat. 1874, p. 721 [2] 1 G. & H. 445. [3] 1 Swan & C. 872.

In the following States the appointment is made by and with the advice and consent of the senate: Arkansas,[1] Illinois, Kentucky,[2] Louisiana,[3] Maryland,[4] Minnesota,[5] Michigan,[6] New York,[7] Texas.[8]

In Massachusetts and New Hampshire, the governor appoints by and with the advice of his council.[9]

In Tennessee, notaries are appointed by the justices of the County Court, three for each county.[10] So in Vermont, the judges of the County Court may annually appoint as many as the public good may require, to hold office for one year. The certificate of appointment must be signed by two or more judges of the County Court, and recorded.[11] In Rhode Island, notaries are elected.[12]

There is a somewhat singular law in Georgia. The governor is authorized to appoint a notary for each militia district, who is to be *ex officio* a justice of the peace. And another class is appointed, termed "commercial notaries," by the judges of the Superior Court.[13]

In Mississippi, before 1872, the duties of notaries were discharged by justices of the peace, but by Act of April 5th, 1872, it is provided, Sec. 1, that "all justices of the peace in this State, mayors of any incorporated city, and the clerks of the Circuit and Chancery Courts, shall be notaries public by virtue of their office." In Sec. 2, the "governor may appoint one notary public for each incorporated city or town having a population of three thousand from the qualified voters."

[1] Gantt's Dig. Sec. 4297.
[2] Gen. Stat. 1873, p. 676.
[3] Dig. of Stat. 1870, p. 272.
[4] Gen. Laws, p. 468.
[5] 1 Bissell's St. 205.
[6] Comp. Laws, 1871, p. 261.
[7] 1 Rev. Stat. 6th Ed. p. 379.
[8] Pascal's Dig. p. 788; by and with the advice of two-thirds of the senate. It seems that the governor's appointment of a notary public is inoperative without the advice and consent of the senate. Brown *v.* State, 43 Tex. 478.
[9] Gen. Stat. 1860, p. 32; Gen. Stat. N. H. p. 62
[10] 1 Thomp. & S. Sec. 1792.
[11] Gen. Stat. p. 97.
[12] Gen. Stat. 1872, p. 68.
[13] Code 1873, Sec. 1497.

**§ 13. Qualifications for appointment.**—It is essential in every place that the notary be a citizen of the State, and that he be a person of good moral character. In some States, a certain length of residence is required before one can be qualified. Thus, in Maryland, the applicant must have had a residence of two years in the State.[1] In Pennsylvania, the applicant must have resided two years in the Commonwealth, and one in the city and county.[2] It is required in some States, before a notary's certificate is issued, that he file a bond conditioned for the faithful discharge of his duties. This is required in those States where notaries are intrusted with very responsible duties, and to whose office a certain dignity and deference is attached. There is a very loose method of appointment in some States: the appointments are not restricted in number, and no bond is exacted, and it is there found that notaries perform their duties very carelessly.[3]

In Alabama, notaries are required to give a bond of $2,000, to be approved by the probate judge.[4]

In California, "each notary must execute an official bond in the sum of $5,000, which bond must be approved by the county judge of his county, and filed and recorded as other official bonds of county officers."[5] And in Wisconsin, a bond of $500 is required.[6]

In Pennsylvania, by Act of February 19th, 1873, the governor is authorized to appoint as many notaries as he deems necessary; but, before a commission is issued, the appointee must pay twenty-five dollars for the use of the Commonwealth.

In Iowa, before any commission is delivered to a notary, he must qualify as follows: 1. Procure a seal, on which shall be engraved the words "Notarial Seal," and "Iowa," with his surname at length, and at least the initials of his Christian name. 2. He must execute a bond in the amount of $500. 3. He shall

[1] Gen. Laws, p. 468.

[2] Purdon's Dig. p. 758.

[3] This is the case in New York, where no bond is required, and where appointments are made very indiscriminately. A large proportion of the members of the bar in New York city are notaries.

[4] Code, Sec. 1080.

[5] Political Code, Sec. 799.

[6] 1 Rev. Stat. 283.

write on said bond his signature, and place on it an impression of his seal. 4. He shall file the bond and papers in the Secretary of State's office. 5. Remit to the Secretary of State the fee required by law.[1]

**§ 14. Period for which appointed.**—In a few of our States, notaries are appointed to hold office during good behavior. This is the case in Florida,[2] South Carolina,[3] West Virginia,[4] and was in Virginia, until the Act of March 8, 1873, authorized the gov-

[1] Code, 1873, p. 42.

In the following States, in addition to those named above, notaries are required to give bonds for the faithful discharge of their duties :

FLORIDA.—$500 to governor, filed in the office of the clerk of the Circuit Court. (Bush's Dig. p. 613.)

ILLINOIS.—$1,000 to the people, to be approved by the governor. (Rev. Stat. p. 721.)

INDIANA.—$1,000. (1 G. & H. 445.)

KANSAS.—$1,000 to the State, with one or more sureties, to be approved by county clerk. (Gen. Stat. 1868, p. 597.)

KENTUCKY.—Bond required, amount not stated. (Gen. Stat. 1873, p. 667.)

LOUISIANA.—$5,000 for the parish of Orleans; $1,000 elsewhere. (Rev. Stat. 1870, Sec. 2503.) And he must have resided in the parish five years before appointment.

MARYLAND.—$2,000 to State, approved by the governor. (Gen. Laws, 1860, p. 460.)

MICHIGAN.—$1,000 to the people, with sureties approved by the county clerk. (Comp. Laws, 1871, Sec. 600.)

MINNESOTA.—$2,000 to State, approved by the governor. (1 Bissell's Stat. p. 205.)

MISSISSIPPI.—$2,000. (Act April 5th, 1872.)

MISSOURI.—$500 to the State, with two good sureties; notaries in St. Louis to give bond in $2,000. (2 Wagner's Stat. p. 959.)

NEBRASKA.—$2,000, with two sureties. (Gen. Stat. p. 492.)

NEVADA.—$2,000, to be approved by district judge. (Comp. Laws, Sec. 331.)

OHIO.—$1,500, approved by the governor. (1 Swan & C. 873.)

OREGON.—$500 to the governor, with sufficient sureties. (Gen. Laws, p. 689.)

PENNSYLVANIA.—Give a bond himself in £600, and two sureties £300 each. (Purdon's Dig. p. 758.)

TENNESSEE.—$5,000 to State, with good security. (Rev. Stat. 1871, Sec. 1794.)

TEXAS.—$2,000, approved by the County Court. (Paschal's Dig. p. 261.)

VIRGINIA.—Not less than $500, within four months from the date, or more than $1,000 of his commission. (Act of March 8th, 1873.)

WEST VIRGINIA.—Not less than $250, or more than $1,000. (Code 1868, p. 80.)

WISCONSIN.—$500 to the governor, with sufficient surety, and pay $2 into the treasury. (1 Taylor's Stat. p. 284.)

In Georgia, it is provided that the appointee must be twenty-one years old, or an attorney-at-law, and of good moral character. (Code 1873 Sec. 1503.)

[2] Thomp. Dig. p. 240.

[3] Rev. Stat. 1873, p. 113.

[4] Code 1868, p. 386.

ernor to appoint one notary for every five hundred of the population, to hold office for four years. In a great many States four years is the period for which the appointment is made.[1] In other States it is two years, as in Connecticut, where they hold office from the 4th of July of the year in which they are commissioned;[2] Minnesota, Nevada, New York, Oregon, Wisconsin, and California. In Iowa, Pennsylvania, and Ohio, the appointment is for three years.[3] In Missouri and Nebraska, the period is six years.[4] The longest definite period is seven years, as in Delaware[5] and Massachusetts.[6] In New Hampshire, the period is five years.[7]

**§ 15. Notaries in France** are divided into three classes, according to the extent of district in which they may exercise their functions. Those of the first class are nominated for towns, or seats of an imperial Court; those of the second class are nominated for towns, or seats of a tribunal of first instance; and those of the third class are nominated for all other places; but an act duly authenticated by a notary is valid without regard to the domicile of the party, or whether or not the notary has drawn it within the extent of his jurisdiction.[8]

[1] This is the period in Georgia, Illinois, Indiana, Kansas, Kentucky, Michigan, Tennessee, Texas, and Colorado.

[2] Gen. Stat. 1875, p. 21.

[3] Iowa, Code 1873, Sec. 258; Penn. Purdon's Dig. p. 758; 1 Swan & C. 872.

[4] Wagner's Stat. p. 959; Neb. Gen. Stat. 1873, p. 280.

[5] Rev. Code, 1874, p. 182.

[6] Gen. Stat. 1860, p. 32.

[7] Gen. Stat. p. 62.

[8] E. Clerc, Notariat en France, Tome 1, p. 3.

This writer gives the fullest account of notaries in France, in a work consisting of four volumes, in addition to two of forms. He points out (pp. 1, 2) that before the time of the Revolution the office was, like many others in France, hereditary, and one of great emolument. The first change was made by a law of Sept. 29th, 1791, which attempted to organize the notaries into classes. But the law which defined the powers and duties and jurisdiction of notaries was that of the twenty-fifth Ventose in the year XI, passed in 1793. The law is divided into three titles: The first regulates the functions, jurisdiction, and duties of notaries, and the manner in which their acts are to be performed in regard to keeping a register, making copies and duplicates; the second determines the number, their residence, security to be given by them, the mode of nomination and condition of admission, the institution of chambers of discipline, and the keeping and transmission of records; and the third relates to general matters in connection with the office. The number is thus determined by the law of the twenty-fifth Ventose: In every city of a hundred thousand inhabitants or over.

The functions and duties of a notary in France are exceedingly important; notarial acts enter into almost every transaction in French society, and the office is sought as one of emolument and considerable dignity, often being transmitted from father to son. Notaries officiate to give a certain authenticity to acts of parties, thereby making these acts somewhat of a public nature. An authentic act is defined by the Civil Code [1] to be that which has been received by a public officer, having the right to draw up such instrument in the place where the act was made, and which is prepared with the required solemnities. The authentic act is full proof of the convention which it embodies between the contracting parties, their heirs or assigns, but in case of complaint of fraud the execution of the act may be suspended.[2] Such authentic act must be received by two notaries; or by a notary assisted by two witnesses, being French citizens, able to write, and domiciled in the district where the act is made.[3]

A French writer thus expresses himself on the profession of a notary: "La profession de notaire est d'une étendue immense, puisqu'à proprement parler, il n'y a point d'affaire qui puisse être de son ressort, ni de personnes qui n'en éprouvent tous les jours la necessité. Mais si sa vaste étendue fait son éloge, on ne scauroit disconvenir qu'elle n'en fasse aussi la difficulté: L'emploi de dépositaire de la confiance de toute le monde, demande des qualités extraordinaires dans celui qui l'exerce; et il est assez difficile d'avoir de si grandes et de si fréquentes liaisons avec le public, sans courir souvent risque de lui nuire. Ainsi, la probité, qui doit être le caractère essentiel de tous les hommes, et qui suffit dans quelques-uns des emplois de la vie civile, n'est pas suffisante dans un notaire; peut-être même ne seroit-elle pour lui qu'une qualité stérile, si elle n'etait éclairée par la science." [4]

there is to be one appointed for every six thousand inhabitants. In other cities, boroughs, or villages, there may be not less than two or more than five appointed for every department of the justice of the peace. To assure complete independence, they are appointed for life. They cannot be removed from their residence without their own consent.

[1] Sec. 1317.

[2] Sec. 1319.

[3] Art. 9, Law 25 Ventose, An. XI.

[4] La Science parfaite des Notaires, par De Ferriere, Tome 1, p. 1.

## CHAPTER III.

### OFFICE AND DUTIES.

§ 16. In general.
§ 17. The States in which notaries do not take acknowledgments.
§ 18. In Louisiana.
§ 19. May act as justices of the peace in some States.
§ 20. May take depositions.
§ 21. The power to take affidavits.
§ 22. Have a local jurisdiction.
§ 23. Powers and duties under United States laws.
§ 24. Under the bankrupt law.
§ 25. Affidavits required by mining laws.
§ 26. May take depositions in certain cases.
§ 27. Duty as to keeping records.
§ 28. Requirements as to a notarial seal.

**§ 16. In general,** the chief official duties of notaries in this country are to evidence certain acts, and confer upon them a certain authenticity; as to take the acknowledgment of deeds and of other instruments in writing; to make protest of negotiable paper and give notice thereof to parties entitled; to administer oaths; to take affidavits and depositions; and, in maritime cities, to make marine protests. Thus, Lord Tenterden observes, in King *v.* The Scriveners' Company:[1] "There is another part of the duty of notaries, and that is to receive the affidavits of mariners and masters of ships, and then to draw up their protests, which is a matter that requires care, attention, and diligence. Besides that, many documents pass before notaries, under their notarial seal, which gives effect to them and renders them evidence in foreign countries."

In some of our States some of these powers are withheld from notaries, while in others they are intrusted with additional functions, which will be noticed.

**§ 17. The States in which notaries do not take acknowledgments of deeds** are: Kentucky, Maine, Maryland,

[1] 10 B. & C. 518.

and New Jersey. In Mississippi, since 1872, notaries are empowered to "receive the proof or acknowledgment of all instruments of writing relating to commerce and navigation, letters of attorney, and such other writings as are commonly proved before notaries within the United States."[1] And by Sec. 7 of the same act they are given power to take the acknowledgments of deeds.

Before 1872, in this State, acknowledgments were to be made before a judge of the Supreme Court, or any judge of the Circuit Court, any chancellor, any clerk of a Court of Record, a justice of the peace, or a member of the board of county supervisors.[2]

In Maine, acknowledgments of deeds are made before justices of the peace; but if made out of the State, they may be taken by a notary.[3] In Brown *v.* Lunt, it was held that an acknowledgment of a deed before a justice of the peace *de facto* is sufficient.[4]

In Maryland, notaries have no power to take acknowledgments, but acknowledgments properly taken out of the State may be received in evidence.

In New Jersey, acknowledgments may be taken before a justice of the Supreme Court, one of the masters in chancery, one of the judges of common pleas, or before a commissioner of deeds appointed by the governor.[5]

In North Carolina, acknowledgment of deeds is made before a judge of probate, since the adoption of the Code of Procedure in 1868.[6] By Chapter 32 of the Laws of 1870 it is declared that the probate of all deeds and other instruments, under laws prior to the adoption of the Code of Civil Procedure, are valid as if taken under existing laws;[7] but, under the present law, notaries can take acknowledgments, though they are not permitted to take the privy examination of *femes covert*.[8]

[1] Act April 5th, 1872.
[2] Code 1871, Sec. 2310.
[3] Rev. Stat. 1871, p. 561.
[4] 37 Me. 423.
[5] Nixon's Digest, p. 144.
[6] Civil Code of Proced. Sec. 429.
[7] Before this, acknowledgments were taken before one of the judges of the Supreme or Superior Court, or in the County Court where the land was situated.
[8] Rev. Code, 1855, p. 239; Battle's Dig. p. 630.

**§ 18. In Louisiana,** as we might naturally expect from its former history, notaries are intrusted with large and responsible powers, and have duties to perform like those devolving upon notaries in France.

They are empowered "to make inventories, appraisements, partitions, to receive wills, make protests, matrimonial contracts, conveyances, and generally all contracts and instruments in writing; to hold family meetings and meetings of creditors; to receive acknowledgments of instruments under private signature; to affix the seals upon the effects of deceased persons, and to raise the same."[1]

And notaries in the parish of West Feliciana are authorized to perform the marriage ceremony.[2]

In Florida, notaries are also authorized to solemnize the rites of matrimony.[3]

**§ 19. May act as justices of the peace in some States.** —In Georgia, notaries are invested with the powers of justices of the peace, by virtue of their office. In Lynes *v.* State,[4] it is held that, under the Constitution of 1868, commissioned notaries public are clothed with judicial powers; they are *ex officio* justices of the peace.

In some of our States there has always been an intimate relation between the office of a notary and that of a justice of the peace. In Mississippi, until recently, justices of the peace discharged the duties of notaries; and, in Virginia, notaries are allowed to exercise the powers and functions of "conservators of the peace."[5]

In Texas, the constitution gives to justices of the peace the power to act as notaries *ex officio*. In Gilleland *v.* Drake,[6] it was held that though the constitution recognizes justices of the peace as notaries *ex officio*, it did not thereby abolish the office of notary, or do away with the Law of 1846. Notaries are recognized and validity given to their official acts by foreign governments, who would not accord the same recognition to the notarial acts of such *ex officio* notaries as justices of the peace,

[1] Rev. Stat. 1870, Sec. 2492.
[2] Sec. 2211.
[3] Bush's Digest, p. 613.
[4] 46 Ga. 208.
[5] Act March 8th, 1873.
[6] 36 Tex. 677.

and therefore it was held that the necessity of continuing the office was understood by the framers of the constitution, and their intention was not to repeal the Law of 1846, under which they were appointed.

By Section 1091 of the Alabama Code, it is provided: "When there is no notary public, or he is absent or incapable of acting, any justice of the peace may discharge the duties required of such notary by the laws of this State, for which he shall receive the fees allowed by law for such services; but when he acts as a notary he must set forth, in his certificate, protest, or notice, that there is no notary public, or that the notary public is absent or incapable of acting, which certificate shall be evidence of such fact." This is almost identical with Article 2304 of the Civil Code of Lower Canada, which enacts: "In case there is no notary in the place, or he is unable or refuses to act, any justice of the peace in Lower Canada may make such noting and protest, and give notice thereof in the same manner; and his acts in that behalf have the same effect as if done by a notary; but such justice must set forth in the protest the reasons why the same was not made by the ministry of a notary."

**§ 20. Notaries take depositions** in more than two-thirds of our States by virtue of their office, and are intrusted with the necessary powers to issue subpœnas for witnesses, punish for contempt, and do whatever is required to carry out their duties in this respect, as justices of the peace may do.[1] From an examination of the statutes of the various States, it appears that notaries, as such, are not authorized to take depositions in the States of Alabama, Delaware, Florida, Georgia, Maryland, Massachusetts, Michigan, Mississippi, New Jersey, and New York. In Louisiana, they are authorized to take depositions in the parish of Orleans.[2]

**§ 21. The power to take affidavits** seems to have been a function of a notary public for a very long time; though a notary had not necessarily this power by virtue of his office under the common law, but derived it from statutory enactments. Brooke,

[1] I have examined in Sec. 70. the powers of notaries when taking depositions.
[2] Digest of Stat. 1870, Sec. 2539.

in regard to this, says: "The English notaries in general appear (as far back as the memory of man extends) to have always considered themselves entitled to administer oaths, affidavits, and affirmations, as within the powers and functions of a notary, and Lord Chief Justice Tenterden, in the King *v.* Scriveners' Company,[1] stated that it was part of their duty to receive affidavits of mariners and masters of ships, and then to draw up their protests. The Act of 6 Geo. IV, Chap. 87, Sec. 20, may be referred to as countenancing, in some degree, the idea that they are authorized to administer oaths; though at one time a different opinion seems to have prevailed amongst the London notaries."[2]

In all our States the power is conferred by statute; and, therefore, Courts will not take judicial cognizance of a notary's power to administer oaths in another State; it must appear in evidence that the power is conferred by statute.[3] In New Jersey, before 1864, there was some doubt as to the validity of affidavits before a notary; a statute was passed reciting that, "whereas, a question has arisen as to the validity of affidavits taken and sworn to before a notary public under the authority of the common law," and, therefore, it was enacted that "all oaths, affirmations, and affidavits heretofore made or taken for any lawful purpose by and before a notary public, duly certified under his hand and official seal, shall be valid."[4]

In North Carolina, before 1866, notaries were not authorized to administer oaths; but, by Ch. 30 of Laws 1866, this power was given "in matters incident or belonging to the duties of this office."

**§ 22. Notaries have a local jurisdiction in the State,** as a general rule; they can only exercise their functions in the county or district for which they are commissioned. But in some places they are authorized to exercise their official powers throughout the State, so long as they reside in the place for which they were appointed. In Connecticut, they may act throughout the State. In Indiana,[5] they are authorized to do the same, but

[1] 10 B. & C. 518.
[2] Office and Practice of a Notary, p. 14.
[3] Keefer *v.* Mason, 36 Ill. 406.
[4] Nixon's Digest, p. 629.
[5] Gen. Stat. 1875, p. 21.

are not compelled to act out of the county.[1] So, in Maryland, a notary may act out of the county.[2] In Michigan, it is provided: "Notaries public shall reside in the county for which they are appointed; but they may act as such notaries in any part of the State, and they shall receive for their services such fees as are provided by law."[3] They can act in Wisconsin throughout the State.[4] In New York, a notary public appointed for either of the counties of Kings, Queens, Richmond, Westchester, Putnam, Suffolk, Rockland, and the city and county of New York, may take acknowledgments, and exercise any of the functions of his office in any of these counties, by procuring from the clerk of his county a certified copy of his appointment, and filing the same with his autograph signature in the clerk's office of any of the other of said counties.[5]

**§ 23. Powers and duties under United States laws.**— By Sec. 1778 of the Revised Statutes it is enacted: "In all cases in which, under the laws of the United States, oaths or acknowledgments may now be taken or made before any justice of the peace of any State or Territory, or in the District of Columbia, they may hereafter also be taken or made by or before any notary public duly appointed in any State, District, or Territory, or any of the commissioners of the Circuit Courts; and when certified under the hand and official seal of such notary or commissioner, shall have the same force as if taken or made by or before such justice of the peace."

At the last session of Congress (approved August 15th, 1876) an important bill was passed, enlarging the powers of notaries under the laws of the United States. It enacts: "That notaries public of the several States, Territories, and the District of Columbia, be and they are hereby authorized to take depositions and do all other acts in relation to taking testimony to be used in the Courts of the United States, and take acknowledgments and affidavits in the same manner, and with the same effect, as commissioners of the United States Circuit Courts may now lawfully take or do."

[1] 1 G. & H. 445.
[2] Gen. Laws 1860, p. 470.
[3] Comp. Laws 1871, Sec. 607
[4] 1 Taylor's Stat. p. 284.
[5] Laws 1875, Chap. 458.

**§ 24. Under the bankrupt law.**—A notary public may take proof of debts according to the Act of Congress of June 22d, 1874, Sec. 20, which provides:[1] "That in addition to the officers now authorized to take a proof of debts against the estate of a bankrupt, notaries public are hereby authorized to take such proof in the manner and under the regulations provided by law; such proof to be certified by the notary and attested by his signature and official seal." The name of the notary must be engraved on the seal, so as to make it his official seal.[2] Lately, it has been held that letters of attorney to represent creditors may be acknowledged before a notary public. General Order No. 34, providing that such letters may be acknowledged or proved before a register, or United States commissioner, was not intended to be exclusive of other methods of proof.[3]

**§ 25. Affidavits required by mining laws.**—By the Revised Statutes of the United States, Sec. 2335, it is provided: "All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land-district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land office."[4]

**§ 26. May take depositions in certain cases.**—The Revised Statutes provide:[5] "The testimony of any witness may be taken in any civil cause depending in a District or Circuit Court by deposition *de bene esse* when the witness lives at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of the district in which the case is to be

[1] See Vol. 18, U. S. Stat. p. 186.

[2] In re Henry Nebe, 11 Bank. Reg. 289.

[3] In re Butterfield & Butt, 14 Bank. Reg. 195. See Desty's Fed. Proced. p. 362.

[4] Under the Pension Laws, a notary may take the affidavit of a claimant of a pension for service in the War of 1812, when the claimant is unable, by reason of age or infirmity, to travel; and when any claimants reside more than twenty-five miles from a Court, the Commissioner of Pensions has power to name notaries to take their affidavits. Rev. Stat. Sec. 4714.

[5] Secs. 863, 864.

tried, and to a greater distance than one hundred miles from the place of trial, before the time of trial, or when he is aged and infirm. The deposition may be taken before any judge of any Court of the United States, or any commissioner of a Circuit Court, or any clerk of a District or Circuit Court, or any chancellor, justice, or judge of a Supreme or Superior Court, mayor or chief magistrate of a city, judge of a County Court or Court of Common Pleas, *or any notary public* not being of counsel or attorney to either of the parties, nor interested in the event of the cause."

"Every person deposing as provided in the preceding section shall be cautioned and sworn to testify the whole truth and carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or by himself in the magistrate's presence, and by no other person, and shall, after it has been reduced to writing, be subscribed by the deponent."

**§ 27. Duty as to keeping records.**—In a large majority of our States, notaries are required to keep a register, in which they shall record their official acts, especially their acts in relation to the protest of negotiable paper.[1] There are strict and precise provisions in regard to this duty in the statutes; and in case of death, disqualification, or removal, the records are to be deposited in places designated, and a failure to do this subjects the notary, or his personal representatives in case of his death, to a fine. The period within which the records must be deposited is generally thirty days, and the person into whose custody they are given is, as a general rule, the county clerk.

Thus, it is provided in California: "If a notary die, resign, is disqualified, removed from office, or removes from the county for which he is appointed, his records and all his public papers must, within thirty days, be delivered to the clerk of the county, who must deliver them to the notary's successor, when qualified."[2]

[1] The following States, as far as we can determine, have no distinct provision in their statutes making it obligatory on notaries to keep a register: Connecticut, Delaware, Florida, Indiana, New York, North Carolina, Rhode Island, South Carolina, Vermont, and Virginia. However, as a rule, notaries make a record of protests and notices.

[2] Political Code, Sec. 796.

The Iowa statute requires the records to be deposited within three months.

The statute of Illinois is very specific as to what the record shall contain. It is required to be a correct record of all protests and notices, and of the time and manner in which they are served, names of parties, to whom directed, and the description and the amount of the instrument.[1]

**§ 28. The requirements as to a notarial seal** are expressly stated in many of our statutes; and this is a matter of much importance, since a seal is, in most places, the evidence of the authenticity of the instrument; and when a statute requires a particular description of seal, that precise seal must be used by the notary, or the instrument will not be duly authenticated.[2] Thus, it was held, in Iowa, that the seal of a notary public for Iowa, resident in another State, is entitled to credit in evidence only when it has his name engraved upon it, and the words "notarial seal," and "Iowa," the impression of all which must appear on the paper, and a defect in the impression is not sufficiently supplied by writing.[3]

We shall notice the requisites of the seal, as required by the statutes of some of the States:

ALABAMA.—Must have on it, the name, office, State, and county; and in this State it was held that the official acts of a notary public must be authenticated by his official seal—a scrawl

and a neglect to do so is declared a misdemeanor. (Code, Sec. 2094.) In Maryland, within sixty days. (Code, p. 469.) The longest period allowed for the deposit of the notary's records is in New Hampshire, where it is six months. (Rev. Stat. p. 62.) In Oregon, if not deposited within three months, there is a penalty of not less than fifty or more than five hundred dollars. (Gen. Laws, p. 689.) The penalty for a failure to deposit is five hundred dollars in West Virginia. (Code 1868, p. 386.)

[1] Rev. Stat. 1874, p. 722.

[2] The requisites of a notarial seal are determined by the law of the place from which the official derives his authority. An official seal is an impression on the paper directly, or on wax or wafer attached thereto, made by the official as and for his seal. In the absence of express legislation, an official seal need not contain the name of the official. It is the seal, and not its composition or character of words and devices, which raises the presumption of official character of which the Courts take judicial notice. Any impression made upon sealing-wax or wafer, adhering to the paper, without any device or words indicative of the particular official, is entitled to judicial sanction as evidence of the official character of the individual who signs the jurat. (In re Phillips, Dist. Ct. U. S. 14 N Bank. R. 219.)

[3] Gage *v.* Dubuque etc. R. Co. 11 Iowa, 310

is not sufficient.[1] But an impression of the notarial seal, made on the paper, is held to be a sufficient sealing.[2]

ARKANSAS.—Shall have the emblems of the great seal of State, surrounded by the words, "Notary Public, County of ——, Ark."; and all acts to be authenticated therewith.[3]

CALIFORNIA.—Arms of the State, the words "Notary Public," and the name of county for which commissioned.[4]

DELAWARE.—After the 1st July, 1873, the impression must show distinctly name, official title, date of appointment, and term of office.[5]

GEORGIA.—The seal shall have name officially, State, and county.[6]

ILLINOIS.—Shall have office and name of place or county in which the notary resides.[7]

INDIANA.—No notary is to act until he have a seal on which is to be engraved his official character, to which may be added such other device as he may choose; and all notarial acts not attested by such seal shall be void.[8]

IOWA.—The words "Notarial Seal" and "Iowa," with the surname at length, and at least the initials of the Christian name.[9]

KANSAS.—Every notary shall have a seal, containing his name and place of residence, and use it on all his official acts.[10]

KENTUCKY.—There is no special provision for a seal in this State; but it has been decided that a notary's certificate of a protest is sufficient without a seal, and is conclusive.[11]

LOUISIANA.—There is no special provision; and it has been held that a notary is not required to have a particular style of seal to give authenticity to his copies.[12]

[1] Dunn *v.* Adams, 1 Ala. 527. See Hinckley *v.* O'Farrell, 4 Blackf. 185; Dumont *v.* McKracken, 6 Id. 356.
[2] Bank of Manchester *v.* Slason, 13 Vt. 334.
[3] Gantt's Digest, Sec. 2455.
[4] Political Code, Sec. 794.
[5] Rev. Code 1874, p. 147.
[6] Codo 1873, Sec. 1503.
[7] Rev. Stat. 1874, p. 721.
[8] 1 G. & H. 445.
[9] Code 1873.
[10] Gen. Stat. 1868, p. 597.
[11] Bank of Kentucky *v.* Pursely, 3 T. B. Mon. 238; Tyler *v.* Bank of Kentucky, 7 Id. 557.
[12] Fleming *v.* Richardson, 13 La. An. 414.

MAINE.—Name and words "Notary Public," and "Maine," with the arms of the State, or such other device as he chooses.[1]

MARYLAND.—Such device as he may think proper; and for legend shall have name, surname, and office of notary and place of residence.[2]

MINNESOTA.—Shall have arms of the State, the words "Notarial Seal," and the name of the county in which he resides.[3]

MISSISSIPPI.—Shall have "Notary Public" of ——— (naming town or city) around the margin, and an eagle in the center. The seal is to be delivered to his successor.[4]

MISSOURI.—Name, surname of office, and name of the county of residence, and shall use the seal on all official acts.[5]

NEBRASKA.—The words "Notarial Seal," the name of the county for which appointed, and the word "Nebraska"; and in addition, at his option, his name, or the initial letters of his name.[6]

NEVADA.—Each notary public shall provide a notarial seal, an impression of which shall be made on his official bond, on which shall be engraved the name of the county for which he is commissioned, and the initials of the Territory, the name of the notary, and the words "Notary Public."[7]

NEW YORK.—There is no special provision for. By Laws 1859, Chap. 360, it is provided that notaries can administer oaths and affidavits, take proof and acknowledgments of deeds, mortgages, and any other papers for use or record in this State, without affixing their official seal.

OHIO.—To have arms of State, the words "Notarial Seal," and name of county.[8]

PENNSYLVANIA.—To have arms of the Commonwealth, and for a legend, name, surname, and office, and the place of residence.[9]

[1] Rev. Stat. 1871, p. 327. See Homes *v.* Smith, 16 Me. 181, holding that the record need not be under seal—that only *copies* are required to have a seal.

[2] Gen. Laws 1860, p. 470.

[3] Bissell's Stat. p. 205.

[4] Act April 5th, 1872.

[5] Wag. Stat. 959.

[6] Gen. Stat. 1873, p. 496.

[7] Comp. Laws, Sec. 339.

[8] 1 Swan & C. 876. A notary cannot take acknowledgment of certificate of corporation. (State *v.* Lee, 21 Ohio St. 662.)

[9] Purdon's Digest, p. 758.

SOUTH CAROLINA.—"That every notary public shall have a seal of office, which shall be affixed to his instruments of publication, and to his protestations; but the absence of such seal shall not render his acts invalid, provided his official title be affixed."[1]

TENNESSEE.—Notary to procure seal at his own expense, which he shall surrender to the County Court when he resigns, or at the expiration of his term of office, and which his representatives, in case of his death, shall likewise surrender to be canceled, on pain of indictment as for a misdemeanor.[2]

TEXAS.—Engraved in the center a star of five points, and the words, "Notary Public, County of ——, Texas," and shall authenticate all his official acts therewith.[3]

VERMONT.—Each shall have a seal of office, which shall be affixed to all papers officially signed by him, unless specially dispensed with by law.[4]

WEST VIRGINIA.—A seal need not be affixed to acknowledgments of deeds, affidavits, and depositions, if the signature of the notary be attached.[5]

WISCONSIN.—Shall have an impression of name, office, and county; and shall deposit an impression of the same in the office of the Secretary of State.[6]

[1] Rev. Stat. 1873, p. 113.

[2] Stat. Thomp. & S. Sec. 1802.

[3] Paschall's Dig. p. 789.

No notarial act is valid unless the seal of office of such notary be affixed. (McKellar *v.* Peck, 39 Tex. 381.)

[4] Gen. Stat. 1870, p. 764.

In this State need not use seal in taking acknowledgments of deeds. (Id. p. 448.)

[5] Code 1868, p. 387.

[6] 1 Taylor's Stat. p. 283.

# CHAPTER IV

## ACKNOWLEDGMENT OF DEEDS.

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**§ 29. The effect of acknowledgment** is to give a right to introduce the deed in evidence, as proof of a conveyance, and to give constructive notice to all who subsequently acquire the property, or any interest therein, of the prior sale or incumbrance.[1] So, where the word "acknowledged" was omitted in the certificate, it was held that the omission could not be supplied by intendment or construction, and that the deed, having no acknowledgment, could not be introduced as evidence of title;[2] and a defect like this could not be supplied by parol

[1] Keichline *v.* Keichline, 54 Penn. St. 75; Bowman *v.* Wettig, 39 Ill. 416; Harrington *v.* Fish, 10 Mich. 415; Pickney *v.* Burrage, 17 N. J. Eq. 13; Jackson *v.* Shepard, 2 Johns. 77; Kelly *v.* Dunlap, 3 Penn. St. 136.

[2] Stanton *v.* Button, 7 Conn. 527. See Short *v.* Conlee, 28 Ill. 219: Boothroyd *v.* Engles, 23 Mich. 19.

evidence.[1] But a deed which is not acknowledged, or which is improperly acknowledged, is nevertheless good as between the parties, and between them may be received in evidence.[2] So it is held that although a deed is defective as to acknowledgment, to as not to be entitled to registration, it is not void but good as between the parties, and as to all the world, except subsequent purchasers without notice, and it should be allowed in evidence, with instructions to the jury as to its effect in giving notice.[3]

**§ 30. A literal compliance is not necessary** with the words of the statute; a substantial compliance, however, must be found in the certificate.[4] Important words omitted from the certificate will be fatal to its validity, and cannot be supplied by intendment, as where the words "for the consideration and purposes therein set forth" prescribed by the statute are omitted.[5] Thus, where the statute provides that the certificate of a judge of a foreign State must set forth that the person executing a power of attorney is "personally known" to said judge, the words "I am satisfied" will not be held sufficient.[6] A deed acknowledged before a proper officer, who certified that the grantors acknowledged the same "to be their act and deed for the uses and purposes therein mentioned," instead of using the language of the statute, that "they signed, sealed, and delivered," etc., was held entitled to admission in evidence.[7]

**§ 31. Essentials of certificate.**—There are two essential things required in a certificate of acknowledgment everywhere, and an omission of either will render the certificate invalid. These are the *fact of acknowledgment*, and the *identity* of the party making the acknowledgment.[8] The party who executes a deed must acknowledge it to the officer to be his deed, either

[1] Hayden *v.* Westcott, 11 Conn. 129; O'Farrell *v.* Simplot, 4 Iowa, 381; Gray *v* Ulrich, 8 Kan. 112.

[2] Strong *v.* Smith, 3 McLean, 362; Beaman *v.* Whitney, 22 Me. 413; Brown *v* Manter, 23 N. H. 468; Gibbs *v.* Swift, 12 Cush. 393; Hill *v.* Samuel, 21 Miss. 307.

[3] Hastings *v.* Vaughn, 5 Cal. 315.

[4] Henderson *v.* Grewell, 8 Cal. 581; Alexander *v.* Merry, 9 Mo. 514; Morse *v* Clayton, 21 Miss. 373; Vance *v.* Schuyler, 6 Ill. 160; Monroe *v.* Arledge, 23 Tex 478.

[5] Jacoway *v.* Gault, 20 Ark. 190.

[6] Shephard *v.* Carriel, 19 Ill. 313.

[7] Den *v.* Hamilton, 12 N. J. L. 109.

[8] Bryan *v.* Ramirez, 8 Cal. 461.

by the use of that word, or some other word equivalent to it, or the certificate will be invalid.[1] This acknowledgment must appear upon the certificate, and cannot be proved by parol evidence.[2]

In most places, the fact of acknowledgment shows the act to be the free and voluntary act of the persons making it; and this is the import of the term,[3] but in Iowa this is otherwise held, and there the certificate must show on its face that it was the "voluntary" deed of the grantor.[4] It is not sufficient to state that the party acknowledged according to law: the particulars must appear from the certificate.[5]

**§ 32. Identity of the party.**—This is the most essential part of the certificate; it is for the purpose of guarding against fraud that the certificate of the notary is required; and for this reason the certificate is looked to as the fullest and most satisfactory evidence of identity. Hence, a certificate which omits to state that the party acknowledging was personally known, or proven, is worthless.[6]

It must appear that it was the *grantor* who appeared and made the acknowledgment. So where a certificate was in these words: "Personally appeared ——, and acknowledged this instrument to be his free act and deed," it was held that the certificate did not impart an acknowledgment by the grantor.[7]

An omission of the word "personally" before the word "known," has in some States been held immaterial.[8] So it has been held, in New York, that a certificate that the party or subscribing witness was known to the officer, sufficiently imports that the officer was personally acquainted with him, and it is not there necessary that the precise language of the statute should be used.[9]

[1] Short *v.* Conlee, 28 Ill. 219.

[2] Pendleton *v.* Button, 3 Conn. 406.

[3] Henderson *v.* Grewell. 8 Cal. 581.

[4] Wickersham *v.* Reeves, 1 Iowa, 413; Newman *v.* Samuels, 17 Id. 528.

[5] Flanagan *v.* Young, 2 Har. & M. 38; Gill *v.* Fauntleroy, 8 B. Mon. 177.

[6] Fogarty *v.* Finlay, 10 Cal. 239; Tully *v.* Davis, 30 Ill. 103; Brinton *v.* Seevers, 12 Iowa, 389; Garnett *v.* Stockton, 7 Humph. 84.

[7] Hayden *v.* Westcott, 11 Conn. 129.

[8] Rosenthal *v.* Griffin, 23 Iowa, 263; Alexander *v.* Merry, 9 Mo. 514; Warner *v.* Hardy, 6 Md. 525; West Point Iron Co. *v.* Reymert, 45 N. Y. 703.

[9] Sheldon *v.* Stryker, 42 Barb. 284; Thurman *v.* Cameron, 24 Wend. 87; Jackson *v.* Gumaer, 2 Cow. 552.

Where, in an acknowledgment of a mortgage, the word "appeared" was omitted after the phrase, "before me personally," it was held that the omission was manifestly a clerical error, and not fatal to its validity.[1] But it must appear that the party acknowledging was known or proved to be the party who signed and executed the instrument. Thus, an acknowledgment: "Personally appeared before me R S L, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed before me," is insufficient.[2] And a certificate stating that A B, "the party grantor of the within instrument, personally appeared," etc., and that "at the same time personally appeared C B, wife of said A B, and," etc., is not a substantial compliance with the requirement of the law that the grantor or grantors were personally known, or their identity satisfactorily proved to the officer making the certificate, and that such facts should be stated therein.[3]

**§ 33. Identity, how proved.**—In most of our statutes, it is provided, where a person is unknown to the officer, how his identity must be made to appear. It is required generally to be on the oath of a certain person named in the certificate.

The mere introduction at the time of a person appearing before an officer for the purpose of acknowledging the execution of an instrument, is not sufficient; legal proof of his identity is necessary, where the officer has no previous knowledge of the person, and such proof should be satisfactory evidence under oath.[4]

**§ 34. As to the officer taking the acknowledgment,** it must appear what his character is, but it is not necessary that it should be stated that he is authorized to take the acknowledgment of deeds where it appears from the public laws of the

[1] Scharfenburg *v.* Bishop, 35 Iowa, 60.

[2] Stuller *v.* Link, 2 N. Y. Supreme C. R. Thom. & C. 86.

[3] Smith *v.* Garden, 28 Wis. 685. See Callaway *v.* Fash, 50 Mo. 420. A defect in the acknowledgment of a sheriff's deed, in which the person before whom it was acknowledged failed to state that "the sheriff was personally known to him," does not invalidate. Ogden *v.* Walters, 12 Kan. 282.

[4] Jones *v.* Bach, 48 Barb. 568. If a wife be introduced to the officer by her husband in the presence of her brother, both of whom are known to the officer, it is sufficient personal knowledge. Rexford *v.* Rexford, 7 Lans. 6.

State that such officer is authorized to take acknowledgments.[1] But when a certificate from another country or State is introduced, signed by a certain officer in his official character, it must appear, before it can be admitted in evidence or to record, that such officer is authorized to take acknowledgments.[2]

It has been held, in Pennsylvania, that the office of a person taking the acknowledgment of a deed, if not appearing in the certificate, may be proved *aliunde*.[3] It is very doubtful if this would be held elsewhere: the deed ought not to be entitled to registration when so signed. But an acknowledgment of a deed before a person who styles himself a justice of the Court of Common Pleas, is prima facie evidence that he was such; and it is not necessary to produce the commission of the justice until some evidence is given to render the fact doubtful.[4]

In Wisconsin, the question of presumption as to the authority of an officer to take acknowledgments, was lately considered in Eaton *v.* Woydt.[5] A deed was introduced, purporting to be acknowledged before an officer styling himself a justice of the peace in New York, and accompanying it was the certificate of the clerk of the city and county of New York, certifying that the person was a justice of the peace, and that the signature of such person was genuine. By statute in Wisconsin, this would be prima facie evidence of the capacity of the person to take acknowledgments; but it was shown, by the person who claimed adversely to the deed, that by the laws of New York, of 1828, justices of the peace had no authority to take acknowledgments of deeds, and the authority was only conferred in 1840. The Court held that this evidence created a *presumption* that they did not possess the authority in 1835.

A commissioner appointed by the governor of a State to take the acknowledgment of deeds, etc., in another State, is an officer of the State from which he derives his appointment. The Courts of that State are bound to take judicial otice of his acts, and these require no other authentication than his seal of

[1] Johnston *v.* Haines, 2 Ohio, 55; Livingston *v.* McDonald, 9 Ohio, 168.
[2] De Segond *v.* Culver, 10 Ohio, 188.
[3] Bennet *v.* Paine, 7 Watts, 334; Scott *v.* Gallagher, 11 S. & R. 347.
[4] Willink *v.* Miles, Pet. C. C. 429.
[5] 32 Wis. 277.

office.[1] So, by the laws of Pennsylvania, a commissioner's certificate is made presumptive evidence of the execution and acknowledgment of a deed out of the State.[2]

It will be sufficient if the officer taking the acknowledgment is an officer *de facto*, who is authorized to take acknowledgments by virtue of his office.[3]

The officer must subscribe his name to the acknowledgment; it will not be sufficient if it appear in the body of the certificate.[4]

**§ 35. Where the officer is a party in interest,** he cannot take the acknowledgment. Thus, where the instrument shows upon its face that the acknowledgment was taken by a party in interest, it is improperly recorded, and is no constructive notice.[5] And where a trustee took the acknowledgment of the grantors in the deed of trust, it was held he was disqualified, and it was declared an invalid acknowledgment.[6] A person cannot take the acknowledgment of a deed to himself or for his use.[7] But it may be taken by an officer who is related to the parties.[8]

**§ 36. A deputy can take the acknowledgment,** in the absence of the principal clerk.[9] A deputy recorder has authority to take an acknowledgment of a deed and certify it in the name and as the act of his principal.[10] A deputy clerk of a Probate Court of Mississippi is competent to receive the acknowledgment of a deed, and it is not necessary that his certificate purport to be that of the principal clerk, "by his deputy."[11]

**§ 37. Place where acknowledgment made.**—There is a difference in the decisions as to the place appearing in the certificate where the acknowledgment is made. This arises from

[1] Smith *v.* Van Gilder, 26 Ark. 527; S. P. Vance *v.* Schuyler, 6 Ill. 160.
[2] Hultz *v.* Ackley, 63 Penn. St. 142.
[3] Hamilton *v.* Pitcher, 53 Mo. 334; Woodruff *v.* McHarry, 56 Ill. 218; Brown *v.* Lunt, 37 Me. 423.
[4] Marston *v.* Brashaw, 18 Mich. 81.
[5] Stevens *v.* Hampton, 46 Mo. 404; Wilson *v.* Traer, 20 Iowa, 231.
[6] Bowne *v.* Moore, 38 Tex. 645.
[7] Groesbeck *v.* Seeley, 13 Mich. 320: Beaman *v.* Whitney, 22 Me. 413.
[8] Lynch *v.* Livingston, 6 N. Y. 422.
[9] Abrams *v.* Erwin, 9 Iowa, 87; Kemp *v.* Porter, 7 Ala. 138; Hope *v.* Sawyer. 14 Ill. 254; Gibbons *v.* Gentry, 20 Mo. 468.
[10] Muller *v.* Boggs, 25 Cal. 175.
[11] McCraven *v.* McGuire, 23 Miss. 100.

the statutes in some States giving a limited jurisdiction to certain officers. This was before adverted to, when the jurisdiction of notaries was considered.[1] Where the officer has a local jurisdiction, and acts out of it, his certificate is worthless; but though notaries be appointed for towns or cities, they are generally county officers, and can act throughout the limits of their county.[2] A certificate of acknowledgment must contain some assignable locality, which the Court can judicially notice, to render the deed admissible in evidence, without proof of its execution, and a notarial seal will not cure a defect in this respect.[3]

It would not be a valid certificate if the locality did not appear, either in the caption, or by the signature of the officer subscribing.[4] Thus, in Chiniquy *v.* Bishop of Chicago,[5] the certificate purported to have been made by the clerk of the County Court, and was formal in all respects, except in the omission, in the caption or margin, of the name of the county. The certificate concluded: "Given under my hand and seal of said Court, this 12th day of July, A. D. 1851," with the delineation of a seal containing the words, "Will County Seal." It was held that the omission of the name of the county in the caption was a mere informality which did not vitiate the certificate, it appearing sufficiently that the acknowledgment was taken by a proper officer of Will County.

In another case in that State[6] it has been held that when a justice of the peace subscribed his name to an acknowledgment, and there did not appear from the certificate any county of which he was a justice, the certificate was not on this account defective. The Court, it was held, would take judicial cognizance of who were justices of the peace in the county where the Court sat. This decision seems to be of doubtful authority, and would not be followed generally. In Iowa, a certificate was not considered valid, because it failed to show the county of the notary before whom the acknowledgment was taken, although the seal had on it "Marshall County." It was held that the seal did not supply the defect. The Court say: "The title of

[1] See Sec. 22.
[2] Hill *v.* Bacon, 43 Ill. 477.
[3] Vance *v.* Schuyler, 6 Ill. 160.
[4] Brooks *v.* Chaplin, 3 Vt. 281.
[5] 41 Ill. 148.
[6] Graham *v.* Anderson, 42 Ill. 514.

the officer is required to be set out in the certificate; the seal is no part thereof. It is not used to correct defects in the instrument to which it is affixed, but to give solemnity to, and authenticate it."[1]

When the grantor in a deed is described as a resident of Windham County, Connecticut, and the county is named in the caption of the certificate, it will be presumed that the justice who took the acknowledgment was such, and acted in that county.[2]

Where a certificate was entitled simply "County of New York," it was insufficient, for failing to show the State in which the act was done; but the defect was cured by the certificate of the county clerk, that the commissioner was duly commissioned for the city, county, and State of New York, residing in the county, and duly qualified.[3]

A notary public is authorized to take the proofs and acknowledgment of deeds in a county for which he is commissioned, although the land conveyed is situated in another county.[4] In Mississippi, before 1836, the acknowledgment should be made before a justice of the county where the whole, or part, of the land is situated.[5] Now, by the statute, this is not necessary.[6]

**§ 38. The necessity of a seal.**—In general, a certificate of acknowledgment should be under the seal of the officer certifying it, unless there are exceptions in the statutes, as there are in a few of our States.[7] But there is scarcely any exception when the certificate is given in one State to be used in another. Thus, it is held, in California, that the statute requires the seal of the

[1] Willard *v.* Cramer, 36 Iowa, 22.

[2] Dunlap *v.* Daugherty, 20 Ill. 397.

[3] Hardin *v.* Osborne, 60 Ill. 93.

[4] Johnson *v.* McGehee, 1 Ala. 168.

[5] Hughes *v.* Wilkinson, 37 Miss. 482.

[6] See Sec. 49 for the statutory provisions.

A justice may, in his own county, acknowledge a deed of land in another county. Colton *v.* Seavey, 22 Cal. 496.

In Massachusetts, under the statute, the acknowledgment of a deed may be made before any justice of the peace in the State: therefore, an acknowledgment taken by a justice out of the county for which he was commissioned, is valid. Learned *v.* Riley, 14 Allen, 109. See, to the same point, Crumbaugh *v.* Kugler, 2 Ohio St. 373.

[7] See, as to the notarial seal, Sec. 28.

officer taking the acknowledgment, as a preliminary to the fitness of the deed for registration, and without conforming strictly to it, the registration will not be constructive notice.[1] Under the Act of 1850, the acknowledgment of a notary, taken under his private seal, was held valid when it was stated in the instrument that he had no public seal,[2] but under the present law he can only authenticate with his *official* seal.

So it is held, in Illinois, that an acknowledgment of a deed by a notary, not attested by a seal, is invalid;[3] and a certificate of acknowledgment to a deed, made in another State, of lands in Illinois, must be under the seal of the Court. A scroll, and the certificate of the clerk that the seal has been lost, will not supply its place.[4] This is probably too strict a rule under the circumstances. Thus, it was decided in Kentucky, under the Act of 1831, which required that a non-resident's deed should be acknowledged, etc., with a certificate of the clerk of the Court, etc., "with the seal of his office annexed," that any seal that the clerk was accustomed to use on such occasions might be deemed his seal of office, though described in the certificate as "his private seal (no seal of the office being yet provided").[5]

A notary's certificate, which declares that he has affixed his official seal, etc., is defective without it;[6] but the omission in the certificate of acknowledgment of the word "seal," between "and" and "of office" is immaterial.[7]

In Massachusetts, the statute provides that deeds of real estate may be acknowledged "before any justice of the peace in this State, or before any justice of the peace, magistrate, or notary public, within the United States, or in any foreign country." Under this, it was decided, in Farnum *v.* Buffum,[8] that a certificate made by a notary public of Rhode Island need not be under seal, as this statute made no mention of a seal. I would not regard this case as good authority—it would not be

[1] Hastings *v.* Vaughn, 5 Cal. 315. See Miller *v.* Henshaw, 4 Dana, (Ky.) 325.
[2] Fogarty *v.* Sawyer, 23 Cal. 570. See Mason *v.* Brock, 12 Ill. 273.
[3] Booth *v.* Cook, 20 Ill. 129.
[4] Skinner *v.* Fulton, 39 Ill. 484.
[5] Collins *v.* Boyd, 5 Dana, 316.
[6] Ballard *v.* Perry, 28 Tex. 347.
[7] Nichols *v.* Stewart, 15 Tex. 226.
[8] 4 Cush. 264.

accepted elsewhere; it may, however, be followed in Massachusetts. [1]

**§ 39. Certificate of probate of deeds.**—When the grantor fails to acknowledge a deed or instrument, the statutes provide for subsequent proof of its execution and delivery before certain officers authorized to take the acknowledgment of deeds, and this subsequent proof is called the probate, etc. In general, one of the two subscribing witnesses is required to make this proof, and the officer usually certifies that he either knew the witness or had satisfactory evidence of his identity.[2] But it has been held that the certificate need not state that the officer knew the witness: it will be presumed that he had satisfactory evidence of his identity.[3]

The certificate of probate must state that the witness saw the grantor execute and deliver the instrument, and that he knew the grantor, and saw the other subscribing witness attest it.[4] A probate stating that the witness "testified that he saw the within grantor sign the same," without adding that he knew him, is insufficient.[5]

A deed was proved before the clerk of a County Court of North Carolina, who wrote opposite the witness' name the word "Jurat," and swore that the witness proved the deed. It was held that this was a sufficient compliance with the statute of that State, to authorize the registration of the deed.[6]

[1] In Ohio, the officer need not affix his seal. Fund Commissioners *v.* Glass, 17 Ohio, 542. So in Minnesota. Thompson *v.* Morgan, 6 Minn. 292. Under the present statute of Ohio, it would seem that a seal is required. See 1 Vol. Swan & C.'s Stat. p. 876.

[2] See forms given in Appendix.

[3] Wood *v.* Harrow, 11 Johns. 434; Parker *v.* Phillips, 9 Cow. 94; Kellogg *v.* Vickory, 1 Wend. 406; Johnson *v.* Prewitt, 32 Mo. 553.

[4] Norman *v.* Wells, 17 Wend. 136; Delauney *v.* Burnett, 9 Ill. 454; Green *v.* Glass, 29 Geo. 246; Doe *v.* Lewis, Id. 45.

[5] Gibbs *v.* Osborn, 2 Wend. 555; Gillet *v.* Stanley, 1 Hill, 121.

[6] Starke *v.* Etheridge, 71 N. C. 243. The statute under which this decision was given reads: "All deeds, etc., required or allowed to be registered, may be admitted to registration in the proper county, upon being acknowledged by the grantor, or proved on oath, before the judge, etc., or before the clerk of such county, or his deputy."

ACKNOWLEDGMENT BY MARRIED WOMEN.

**§ 40. Theory of the law in respect to.**—The dependent position of married women, according to the theory of the law, is plainly shown in the statutory requirements regarding an acknowledgment by a married woman. The common law regarded the woman as *sub potestate viri*, and therefore it provided for a separate examination of the wife, apart from the husband, and required her to state that her act was free and voluntary.

It is thus stated by Coke: "The examination of a *feme covert* ought to be secret; and the effect is to examine her whether she be content to levie a fine of such lands (naming them particularly and distinctly, and the estate that passeth by the fine) of her own voluntary free will, and not by threats, menaces, or any compulsorie means."[1]

Though fines and recoveries were abolished in England by the Statute 3 and 4 Will. IV, Chap. 74, yet it is provided by the same statute that the deed of a married woman must be acknowledged on a separate examination. In a great many of our States this is required still, and in the section at the end of this chapter will be found the provisions of the statutes of the various States, showing where this examination is required.

**§ 41. Requisites of the certificate.**—In some States there are peculiar requirements, which will be found in the forms in the Appendix; but as a rule the following are the substantial requisites: 1. The wife must be taken apart from the presence and hearing of the husband. 2. She must be made aware of the contents of the instrument. 3. She must acknowledge that she freely and voluntarily signed and executed it, without any fear or compulsion of her husband. 4. That she does not wish to retract the act, or, as some require, that she desires the instrument to be recorded as her act and deed.

**§ 42. As to the exact compliance with these requirements,** there is very little doubt in the decisions. The Courts insist upon a close and rigid adherence to the provisions of the

[1] Co. Litt. 353a.

statute; and though a literal compliance may not be exacted, still it must appear from the certificate that the prescribed form was substantially observed. So it is held that the certificate of the acknowledgment of a married woman of her execution of a deed must show, by the facts stated therein, that she has been examined in the manner prescribed by the statute, or the deed as to her will not be valid.[1]

The cases on this point differ in two respects. Some hold a strict compliance with the terms of the statute essential, and admit nothing by way of construction or inference; while others look more to a substantial compliance, giving a fair construction to the language, which they hold need not be *in ipsissimus verbis* of the statute, and that words of synonymous import will be sufficient.

Thus, in Hollingsworth *v.* McDonald,[2] the Court say: "That the acknowledgment is substantially defective, the word 'fear' being omitted in the certificate of the acknowledgment, and no word of similar import or meaning substituted in its place." So, in McIntire *v.* Ward,[3] it was adjudged not to be essential for the officer taking the acknowledgment to use the words of the statute in his certificate; but that it was sufficient if the directions of the statute were substantially followed.[4]

In New York, where the statute requires the officer before whom the acknowledgment of the deed of a married woman is taken, to certify that, on "a private examination apart from her husband, she executed such conveyance freely, and without any fear or compulsion of her husband," a certificate that, on an examination, "separate and apart from her husband, she acknowledged the execution of the same without fear or compulsion from him," was held a sufficient compliance with the statute.[5] The correct view, it would seem, is, that while the language of the

[1] Jordan *v.* Corey, 2 Ind. 385; Lewis *v.* Waters, 3 Har. & McH. 429; Nantz *v.* Bailey, 3 Dana, 111; Blackburne *v.* Pennington, 8 B. Mon. 217; Meddock *v.* Williams, 12 Ohio, 377; Ward *v.* McIntosh, 12 Ohio St. 231; Garrett *v.* Moss, 22 Ill. 363; Gove *v.* Cather, 23 Ill. 634; McBryde *v.* Wilkinson, 29 Ala. 662.

[2] 2 Har. & J. 230.

[3] 5 Binn. 296.

[4] To the same point, Brown *v.* Farran, 3 Ohio, 140; Barton *v.* Morris, 15 Ohio, 408; Owen *v.* Norris, 5 Blackf. 479; Hughes *v.* Lane, 11 Ill. 123; Bell *v.* Evans, 10 Iowa, 353; Dickerson *v.* Davis, 12 Iowa, 353; Dundas *v.* Hitchcock, 12 How. U. S. 256; Goode *v.* Smith, 13 Cal. 81; Stuart *v.* Dutton, 39 Ill. 91.

[5] Dennis *v.* Tarpenny, 20 Barb. 371.

statute need not be literally followed, yet every fact required must be stated in the certificate, either by words of equivalent import, or in such a clear, unmistakable manner that the requirements of the statute are substantially complied with.

**§ 43. A private examination.**—This is the first and leading requirement in all the statutes. The law long looked upon the wife as under the control of the husband, holding him liable for her torts committed in his presence, on the theory of the power or coercion he could exert over her. So it was not expected that, in his presence, and within his hearing, she would be likely to act contrary to his wishes, and therefore it required her to signify her wish or intention apart from him before the officer taking her acknowledgment.

Now first the question arises, what language must be used to certify to this requisite of the statute? It is best, and the safest way at all times, to follow the identical language of the statute, and not to trust to equivalent words; sometimes, where the form is not followed, it has to be determined whether other expressions may be construed as fulfilling this requirement, but where no privy examination is apparent, the certificate is worthless.[1]

In Meriam *v.* Harsen,[2] it is said "the object of the private examination of the wife, apart from her husband, is to ascertain whether the execution of the deed was her spontaneous act; or whether she was induced to execute it by coercion, or fear, or ill usage, or other injury from her husband."

Where the certificate of the acknowledgment of a deed by a married woman does not show that she was examined separate and apart from her husband, parol evidence is not admissible to show that she was, in fact, so examined.[3] It need not state that there was a "private examination," if it certify that she was examined separate and apart from her husband.[4] But the averment in the certificate that she was examined privily and apart

[1] McCandless *v.* Engle, 51 Penn. St. 309; Evans *v.* Commonwealth, 4 Serg. & R. 272; Jourdan *v.* Jourdan, 9 S. & R. 268; Elliott *v.* Peirsol, 1 Pet. 328; McCann *v.* Edwards, 6 B. Mon. 208; Sibley *v.* Johnson, 1 Mich. 380; Edgerton *v.* Jones, 10 Minn. 427; Howell *v.* Ashmore, 2 Zabr. 261; Needles *v.* Needles, 7 Ohio St. 432; Ewald *v.* Corbett, 32 Cal. 493.

[2] 2 Barb. Ch. 232.

[3] Harty *v.* Ladd, 3 Oreg. 353; S. P. Elliott *v.* Peirsol, 1 Pet. 328.

[4] Thayer *v.* Torrey, 37 N. J. L. 339.

from her husband, is not impeached by proof that the door to the next room, where he was waiting, was not shut.[1]

Some of the statutes require that the examination be made without the hearing of the husband. This is the form in California. In a case in Indiana, where the certificate stated that the wife had been examined separate and apart from her husband, but did not state that she had been examined "without the hearing of her husband," it was held a fatal defect.[2]

In Michigan, where the statute required the deed to be acknowledged on "a private examination separate and apart from her husband," and the certificate stated that, "separately and apart from her husband, she acknowledged that she executed the same, freely and without fear or compulsion of any one," it was held it was defective, because it did not state that the acknowledgment was made on a "private examination."[3] The Court say: "It may be admitted that the terms 'on a private examination' might, perhaps, be held to include the idea of separation from, not only the husband, but all others; but the terms, 'separate and apart from her husband,' do not embrace this full idea." This construction is unusually strict, and would not be generally followed. It was held, in North Carolina, that the phrases, "privy examination," "private examination," and "examination separate and apart from her husband," are indifferently used in the acts of assembly.[4]

In Love *v.* Taylor,[5] the certificate of acknowledgment of a married woman to a deed relinquishing her dower, which stated that the "said E, being examined separate and apart from her husband, acknowledged," etc., was held sufficient; and the Court declared that it was not absolutely necessary that the words on "private examination" should be inserted in the certificate, but only that it should appear that the acknowledgment was made out of the presence of the husband. This case is contrary to Sibley *v.* Johnson, Supra, though the language of the statutes was similar; it is, however, preferable as an authority.

**§ 44. The wife must be made acquainted with the contents of the instrument.**—This is a requisite in nearly all the

[1] Kavanaugh *v.* Day, 10 R. I. 393.
[2] Jordan *v.* Corey, 2 Ind. 385.
[3] Sibley *v.* Johnson, 1 Mann. 380.
[4] Skinner *v.* Fletcher, 1 Ired. 313.
[5] 26 Miss. 567.

statutes. In some, the contents must be explained to her by the officer, as in California, where the certificate states that she was made acquainted with the contents of the instrument.[1] In a few others, it does not seem to be necessary to state this, it being implied. In Delaware, it is required to state that she, "being at the same time examined by us, apart from her husband, acknowledged that she executed the said indenture willingly, without compulsion, or threats, or fear of her husband's displeasure"; and in New York, that "the said ——, on a private examination by me, separate and apart from her said husband, acknowledged that she had executed the same freely, and without any fear or compulsion of her husband." In California, a certificate stated that she, "after being made acquainted with the contents of said instrument, acknowledged" the same. This was held sufficient, although it did not state that the contents were made known to her by the certifying officer.[2] But where the statute requires that the contents should be made known to her, and the certificate omits to state that fact, it is invalid.[3] Where a statute required that the contents be explained to her, it was held sufficient to certify that she was "acquainted with the contents."[4]

The rule is, that a certificate of acknowledgment of a deed need only substantially comply with the statute, and a certificate was held to be sufficient, although stating that the "contents and meaning of said husband were fully explained and made known to her," instead of using the word "deed" in the place of the word "husband."[5]

**§ 45. The certificate must state a voluntary, free act** on the part of the wife, without any fear, coercion, or compul-

[1] So in Arkansas, Colorado, District of Columbia, Illinois, Kentucky, where it states that "the contents and effects of the instrument were explained to her," Louisiana, Minnesota, Missouri, Nevada, New Jersey, Ohio, Pennsylvania, Rhode Island, Texas, Virginia, West Virginia.

[2] Jansen *v.* McCahill, 22 Cal. 563; Talbot *v.* Simpson, 1 Pet. C. C. 188; Shaller *v.* Brand, 6 Binn. 438.

[3] O'Ferrall *v.* Simplot, 4 Greene, (Iowa) 381; Oowen *v.* Robbins, 19 Ill. 545; Silliman *v.* Cummins, 13 Ohio, 116; Hairston *v.* Randolph, 12 Leigh, 445; Pease *v.* Barbiers, 10 Cal. 436.

[4] Thomas *v.* Meir, 18 Mo. 573. But see contra, Stevens *v.* Doe, 6 Blackf. 475.

[5] Calumet etc. Co. *v.* Russell, 68 Ill. 426. Where the wife did not understand English, and the officer did not communicate with her in her language, the certificate was invalid. Fisher *v.* Meister, 24 Mich. 447.

sion of her husband. If the certificate be correct in every other respect, and omits to state that she willingly, or freely, or voluntarily signed the deed, it is fatally defective.[1] It is held that the very words of the statute need not be used, provided it is shown that the act of the wife was free, and not induced by the influence or compulsion of the husband. Thus, where the statute required the officer to certify that on "a private examination, apart from her husband, she executed such conveyance freely and without any fear or compulsion of her husband," a certificate that, on examination, "separate and apart from her husband," she acknowledged the execution of the same, "without fear or compulsion from him," was sufficient.[2] So where the certificate failed to set forth that the wife "voluntarily" executed the conveyance, this omission was held to be substantially supplied by the expression that "she freely executed the deed without any fear, threats, or compulsion of her husband."[3]

In one case, a construction was placed upon the word "voluntary" which appears very liberal. The statute of Ohio, under which the decision was made, required her to declare "that she voluntarily, and of her own free will and accord, without any fear or coercion of her husband, did acknowledge," etc. The certificate stated it as being her "voluntary act and deed," but omitted that it was "without any fear or coercion of her husband." The Court say: "The term 'voluntary' is defined to be, acting without compulsion, acting by choice, willing of one's own accord. The declaration of the wife, then, on her separate

[1] Smith *v.* Elliott, 39 Tex. 201; Rice *v.* Peacock, 37 Id. 392; Laird *v.* Scott, 5 Heisk. 314; Blackburn *v.* Pennington, 8 B. Mon. 217; Toulmin *v.* Heidelberg, 32 Miss. 268; Lucas *v.* Cobb, 1 Dev. & Bat. 328. In a recent case, in West Virginia, Leftwich *v.* Neal, 7 W. Va. 569, the certificate was invalid because it did not state "that she had willingly executed the same," and omitted words of equivalent import. In this case, the authorities are reviewed. In Bernard *v.* Elder, 50 Miss. 342, the certificate was as follows: "Also, Rosalie Ladner, wife of Joseph Ladner, who has been examined separately and apart from her husband, has declared that she has signed, sealed, and delivered these presents, without fear, threats, or compulsion of her husband." It was held that this was substantially sufficient, though "private examination," and "as her voluntary act and deed," and "freely" were omitted as prescribed in the statute. The Court cited previous cases as sustaining its decision: Russ *v.* Wingate, 30 Miss. 446; Smith *v.* Williams, 38 Miss. 48. See, also, Heinrich *v.* Simpson, 66 Ill. 57; Ridgeway *v.* Underwood, 67 Ill. 410.

[2] Dennis *v.* Tarpenny, 20 Barb. 371.

[3] Battin *v.* Bigelow, 1 Pet. C. C. 452.

examination, excludes the idea of fear or force. If she executed the instrument willingly, of choice, and of her own accord, as her admission before the justice imports, she could not have been under the influence of fear, much less of coercion."[1]

In Tubbs *v.* Gatewood,[2] a recent case in Arkansas, the certificate stated that she declared she signed, executed, etc., "without compulsion or influence of her husband," but the statute required her to declare that "she had of her own free will" executed the instrument, "without compulsion or undue influence of her husband." It was held that the use of the latter words sufficiently indicated that it was "freely" done.

The strictest rule that has been laid down in respect to this requisite is held in Alabama. The statute required that she should acknowledge "that she signed, sealed, and delivered the same, as her voluntary act and deed, freely, without *any fear*, threats, or compulsion of her husband"; and the certificate was "that she signed, sealed, and delivered the above instrument on her own free will and accord, and without any force, persuasion, or threats from her said husband." It will be seen that the certificate omits to state that she did it without *the fear* of her husband; and the Court say: "Fear may exist on the part of the wife, 'without any force, persuasion, or threats' from her husband. Her acknowledgment, that she executed the deed of her own free will and accord, is not identical in substance without an acknowledgment that she executed it freely, without any fear of her husband. Fear may exist, and often does exist, in a degree so moderate as not to destroy the freedom of the will. * * * * * But it may exist in a much more moderate degree, and fall far short of undue influence, or moral coercion."[3]

**§ 46. That she does not wish to retract her act,** or that she desires the instrument to be recorded, is a requisite to be found in some certificates. This is required in California, where the certificate must state "that she does not wish to retract the execution of the same."[4] The same is required in the District

[1] Brown *v.* Farran, 3 Ohio, 140; S. P. Dundas *v.* Hitchcock, 12 How. U. S. 256.
[2] 26 Ark. 128.
[3] Boykin *v.* Rain, 28 Ala. 332.
Under the present law of that State there is no privy examination required.
[4] Civil Code, Sec. 1191.

of Columbia.[1] In Kentucky, it is to be stated that she "consented the same might be recorded."[2] In Nevada, it is required to be stated that "she does not wish to retract the execution of the same."[3] The same form is required in Rhode Island, Texas, Virginia, and West Virginia.[4]

In Grove *v.* Zumbro,[5] it was held that the omission in the certificate to state that she did not wish to retract what she had done, was a fatal defect. But, in Illinois, it has been decided that the words "does not wish to retract" do not properly constitute any part of the acknowledgment; they are inserted in the statute to afford a married woman an opportunity to avoid a deed conveying her interest, which she has voluntarily executed, if, at the time the officer takes the acknowledgment, she desires to retract what she has done.[6] This decision, it appears to me, holds too liberal a construction of the statute, and would not, it is believed, be accepted as authority elsewhere. The present statute of Illinois does not require these words.

**§ 47. Effect of the certificate against the wife.**—The certificate complying with the requirements of the law will conclude the wife, in the absence of fraud, imposition, or combination.[7]

In Louden *v.* Blythe,[8] there was a very elaborate examination of this subject, and in the decision it is said: "A regard to the policy of the law for the security of titles and the protection of the rights of property which are passed by conveyances and assurances of which these acknowledgments and certificates are a common part, will restrain this Court from allowing such acknowledgments to be impeached by parol evidence, contradicting the facts certified, in the absence of fraud and imposition; and where there are fraud and imposition alleged, the knowledge of it ought to be brought home to the grantee,

[1] Rev. Stat. Sec. 451.
[2] Gen. Stat. 1873, p. 276.
[3] Compiled Laws, Sec. 250.
[4] See forms in Appendix.
[5] 14 Gratt. 501. So in Bartlett *v.* Fleming, 3 W. Va. 163. See Allen *v.* Shortridge, 1 Duvall, 34.
[6] Hughes *v.* Lane, 11 Ill. 123.
[7] Hartley *v.* Frosh, 6 Tex. 208; Hays *v.* Hays, 5 Rich. S. C. 31; Michener *v.* Cavender, 38 Penn. St. 334; Central Bank *v.* Copeland, 18 Md. 305.
[8] 16 Penn. St. 532.

or of such circumstances within his knowledge of the want of free will and consent on the part of the wife as should lead him to inform himself of the reality of a free execution and ac knowledgment by the wife whose property was to be divested. Where the grantee has knowledge of facts to put him on that inquiry, if silent and inactive on the subject, it is at his peril, and he must abide the consequences."[1]

But the failure of the husband to disclose to his wife the character of a mortgage which she executed at his request, and in entire ignorance of its contents, the grantee not being present, and having no reason to suspect imposition, does not constitute such fraud as will enable her to contradict, by parol, the certificate of acknowledgment.[2]

So a married woman cannot impeach for invalid acknowledgment in the hands of a bona fide grantee.[3]

**§ 48. Liability of notary for invalid acknowledgment.** —Notaries are required to give bonds, in a majority of our States, for the true and faithful discharge of their official duties. The question will arise as to the nature and extent of this guarantee, and as to what particular acts or omissions it provides against. Does it assure one against the unskillfulness or the incapacity of the notary in the discharge of his official acts, or does it merely assure against his negligence? There can be no question whatever that it does give a guarantee against his negligence; for it could hardly be maintained he discharges his duties faithfully when he is guilty of negligence in his official acts; but it is quite a different question whether he can be held liable, on his official bond, for incapacity or mistake, when he acts in good faith to the best of his ability. There is no doubt, if he assumes to act in a given case as one possessing the requisite ability or skill, he can be held as any other agent for any loss by reason of his incapacity, but then it can hardly be said he is guilty of unfaithfulness.[4] For instance, suppose, in taking

[1] See, to the same point, Schrader *v.* Decker, 9 Penn. St. 14.

[2] Baldwin *v.* Snowden, 11 Ohio St. 203.

[3] Kerr *v.* Russell, 69 Ill. 666.

See, for a further examination of this question, the chapter on "Notarial Acts as Evidence."

[4] See, for a further examination of this liability, Sec. 134, on negligence in reference to negotiable paper.

an acknowledgment, he has put before him, as is frequently the case, a form of a certificate drawn by the attorney of one of the parties, and that he duly attests it with his signature and official seal, and that afterward it turns out the certificate is invalid for some omission or informality, and loss is sustained thereby. Is he liable on his official bond for the damages thus occasioned? We think this would depend on the nature of the omission, as whether he omitted to certify to a fact to which he must certify *as having personal cognizance.* It would hardly be fair to hold the notary to any stricter liability, for he is not to be considered a lawyer who warrants his skill and capacity unless he assumes to do so. A case in California[1] illustrates the position laid down above, and, perhaps, holds the notary to a stricter liability than would be the case elsewhere; but it was based on the statute, which provided: "For any misconduct or neglect of duty, in any of the cases in which any notary public, appointed under the authority of this State, is authorized to act," etc., "he shall be liable on his official bond to the parties injured thereby for all damages sustained."[2] In this case, the notary, Finlay, took the acknowledgment of a mortgagor, and omitted to state in his certificate, as the statute required, that the party acknowledging was known to him, or was identified by the testimony of a witness examined for that purpose. The certificate was partly filled up by a person who acted as attorney for both the mortgagor and mortgagee, but space was left for this requisite. The mortgage thus recorded was held insufficient to give notice to a subsequent incumbrancer, and the result was that the party lost the security of his debt, as the mortgagor was insolvent. The notary was held liable on his official bond for the amount of the debt and interest. In giving the decision the Court said: "The neglect is not excused by the fact that the certificate had been partially filled by the attorney for the grantee. The certificate, upon its face, is unfinished; the date and the name of the grantor had been inserted, leaving it for the notary to insert his knowledge, or the

[1] Fogarty *v.* Finlay, 10 Cal. 239.

[2] The present Political Code, Sec. 801, has substantially the same provision. It provides: "For the official misconduct or neglect of a notary public, he and the sureties on his official bond are liable to the parties injured thereby for all the damages sustained."

evidence received of the identity of the party making the acknowledgment. If the notary read the certificate before signing it, this omission must have been known to him; if he did not, he is equally guilty of negligence, for an officer who affixes his official signature and seal to a document (thereby giving to it the character of evidence) without examining it to find whether the facts certified are true, can scarcely be said to faithfully perform his duty according to law."

**§ 49. Statutory provisions in reference to acknowledgments.**—The following is a synopsis of the statutory provisions of the various States in reference to the execution and acknowledgments of conveyances:

ALABAMA.—*Execution*—By grantor, and attested by one witness. If the grantor be unable to write, then by two witnesses, who must write their names. Acknowledgment dispenses with witnesses. (Code, Secs. 1535, 1536.) *Acknowledgment*—Within the State may be made before judges of the Supreme and Circuit Courts, and their clerks, chancellors, registers in chancery, judges of the Court of Probate, justices of the peace, and notaries public. (Code, Sec. 1545. See form of acknowledgment in Appendix.) *Married women*—Conveyances of a wife's property, made in writing by husband and wife jointly, and acknowledged before some officer authorized to take acknowledgments of conveyances, are as valid and adequate to pass the wife's estate as if the same were attested by two witnesses. (Code, Sec. 1552.) *Dower*—No private examination required to relinquish.

ARKANSAS.—*Execution*—In the presence of two disinterested witnesses, or, in default thereof, shall be acknowledged by the grantor in the presence of two such witnesses, who shall affix their names and dates of signing. *Acknowledgment*—When acknowledged or proved in the State, before the Supreme Court, the Circuit Court, or either of the judges thereof, or the clerk of any Court of Record, or before any justice of the peace or notary public. (Gantt's Dig. Secs. 840–1.) *Married women*—To have private examination. (See form in Appendix.)

CALIFORNIA.—*Execution*—Witnesses not necessary, but usual. *Acknowledgment*—Within the State, before a judge or

a clerk of a Court of Record, a mayor or recorder of a city, a Court commissioner, a county recorder, a notary public, or a justice of the peace. (Civil Code, Sec. 1181.) *Married woman*—Must be made acquainted by the officer with the contents of the instrument, on an examination without the hearing of her husband; and must thereupon acknowledge to the officer that she executed the instrument, and that she does not wish to retract such execution. (Civil Code, Sec. 1186. For form, see Appendix.)

COLORADO.—*Execution*—No witnesses required. *Acknowledgment*—Within the State, before any justice of the Supreme or District Courts, before a clerk of the same or his deputy, probate judge of any county, such clerks or probate judge to certify by seal; before the clerk and recorder of any county, before any notary public, he certifying the same by his notarial seal. (Rev. Stat. p. 108.) *Married women*—Separate examination required for, and officer to make known contents of instrument.

CONNECTICUT.—*Execution*—By grantor in presence of *two* witnesses, who must sign as such. (Rev. Stat. 1875, p. 352.) *Acknowledgment*—May be made in the State before a judge of a Court of Record in this State, or of the United States, justice of the peace, commissioner of the school fund, commissioner of the Superior Court, notary public, either with or without his official seal, town clerk or assistant town clerk. In any other State or Territory, by a commissioner appointed by the governor of the State, and residing therein, or any other officer authorized to take the acknowledgment of deeds in such State or Territory. In a foreign country, by any consul of the United States, or notary public, or justice of the peace. *Married women*—No private acknowledgment required. Dower exists, but only in the real estate of which the husband is *owner at his death* (p. 377).

DELAWARE.—*Execution*—Witnesses may attest, but are not necessary. *Acknowledgment*—May be made in any county in the Superior Court, or before the chancellor, or any judge, or notary public, or before two justices of the peace for the same county. Such deed may also be acknowledged in the said Superior Court by attorney by virtue of a power contained in

it, or separate from it; the power being first proved in the said Court. Also, such deed may be proved in the said Court by one or more of the subscribing witnesses. (Rev. Code, 1874, p. 501.) *Married women*—Are required to have a separate and private examination, and the acknowledgment may be taken in any county before the chancellor, or any judge, a notary public, or two justices of the peace. (For form, see Appendix.)

FLORIDA.—*Execution*—All grants, conveyances, or assignments of trust, or confidence of or in any lands, tenements, or hereditaments, or of any estate or interest therein, shall be by deed sealed and delivered in the presence of two witnesses by the party granting, conveying, or assigning the same. (Bush's Dig. 149.) *Acknowledgment*—To be made before officer authorized to record conveyance, or before some judicial officer of the State, (Id. p. 151) or before a notary public. (Id. p. 613.) *Married women*—To have private examination when joining to release dower; and acknowledgment must state that the relinquishment and renunciation of dower is made freely and voluntarily, and without any compulsion, constraint, apprehension, or fear of or from the husband. (Id. p. 149.)

GEORGIA.—*Execution*—Must be attested by at least *two* witnesses, and delivered to the purchaser, or some one for him, and may be made on a valuable or good consideration. (Code of 1873, Sec. 2690.) *Acknowledgment*—By a judge of a Court of Record, a justice of the peace, notary public, or clerk of the Superior Court in the county in which the three last mentioned officers, respectively, hold their appointments. A witness may prove the execution before either of the officers aforesaid, which will entitle it to record. (Code, Secs. 2706, 2707.) *Married women*—No private acknowledgment required, except in certain cases in relinquishing dower.

ILLINOIS.—*Execution*—Witnesses not necessary, but may attest. *Acknowledgment*—In the State may be before a master in chancery, notary public, United States commissioner, circuit or county clerk, justice of the peace, or any Court of Record having a seal, or any judge, justice, or clerk of any such Court. When taken before a notary public or United States commissioner, the same shall be attested by his official seal; when taken before a Court or the clerk thereof, the same shall be at-

tested by the seal of such Court; and when taken before a justice of the peace, there shall be added the certificate of the county clerk, under his seal of office, that the person taking such acknowledgment or proof was a justice of the peace in said county at the time of taking the same. If the justice of the peace reside in the county where the lands mentioned in the instrument are situated, no such certificate shall be required. (Rev. Stat. 1874, p. 276.) *Married women*—The acknowledgment or proof of any deed, mortgage, conveyance, release of dower, power of attorney, or other writing of or relating to the sale, conveyance, or other disposition of lands or real estate, or any interest therein, by a married woman, may be made and certified the same as if she were a *feme sole*, and shall have the same effect (p. 276). (For form, see Appendix.)

INDIANA.—*Execution*—Witnesses are not required to attest. *Acknowledgment*—Before any judge, or clerk of a Court of Record, justice of the peace, auditor, recorder, notary public, or mayor of a city in this or any other State, or before any commissioner appointed in any other State by the governor of this State, or before any minister, chargé d'affaires, or consul of the United States, in any foreign country. (1 G. & H. 261.) *Married women*—It is not necessary for a married woman to acknowledge her deed in any form other than that required by unmarried persons.

IOWA.—*Execution*—Witnesses are not required, but may attest. *Acknowledgment*—Any deed, conveyance, or other instrument in writing, by which real estate in this State shall be conveyed or incumbered, if acknowledged within this State, must be so before some Court having a seal, or some judge or clerk thereof, or some justice of the peace or notary public. (Code 1873, Sec. 1955.) The Court, or officer taking the acknowledgment, must indorse upon the deed, or other instrument, a certificate setting forth the following particulars: 1. The title of the Court, or the person before whom the acknowledgment was taken. 2. That the person making the acknowledgment was personally known to at least one of the judges of the Court, or to the officer taking the acknowledgment, to be the identical person whose name is affixed to the deed as grantor, or that such identity was proved by at least one credible wit-

ness, naming him. 3. That such person acknowledged the instrument to be his voluntary act and deed. (Code, Sec. 1958.) *Married women*—No private acknowledgment required.

KANSAS.—*Execution*—No witnesses are required. *Acknowledgment*—All conveyances, and other instruments affecting real estate, must be acknowledged within this State before some Court having a seal, or some judge, justice, or clerk thereof, or some justice of the peace, notary public, county clerk, or register of deeds, or mayor, or clerk of an incorporated city. The Court or officer taking the acknowledgment must indorse upon the deed a certificate, showing in substance the title of the Court or officer before whom the acknowledgment is taken; that the person making the acknowledgment was personally known to the Court, or to the officer taking the acknowledgment, to be the same person who executed the instrument, and that such person duly acknowledged the execution of the same. (Gen. Stat. 1868, p. 186.) *Married women*—No private examination required.

KENTUCKY.—*Execution*—No witnesses are required. *Acknowledgment*—Before the clerk of the county in which the property conveyed, or the greater part thereof, is situated. (Gen. Stat. 1873, p. 256.) *Married women*—To have a private examination, if taken out of the State, separate and apart from husband, and must declare she is willing to have the instrument recorded. (For form of acknowledgment out of State, see Appendix.)

LOUISIANA.—*Execution*—Deed drawn up by a notary in presence of two witnesses. (Civil Code, Sec. 2231.) *Acknowledgment*—A conveyance of real estate is an act requiring the office of a notary in this State. (Rev. Stat. p. 494.) In order to *authenticate* the act, it must be executed before a notary public, in presence of two witnesses, free, male, and aged at least fourteen years, or of three witnesses if the party be blind. If the party does not know how to sign, the notary must cause him to affix his mark to the instrument. *Married women* above the age of twenty-one years shall have the right, with the consent of their husbands, by act passed before a notary public, to renounce in favor of third persons their matrimonial, dotal, paraphernal, and other rights: *provided*, that the notary public, be-

fore receiving the signature of any married woman out of the presence of her husband, the nature of her rights, and of the contract she agrees to. (Rev. Stat. p. 338.)

MAINE.—*Execution*—Witnesses may attest, but are not necessary. *Acknowledgment*—Deeds are to be acknowledged by the grantors or one of them, or by their attorney executing the same, before a justice of the peace in this State, or any justice of the peace, magistrate, or notary public within any of the United States, or before any minister or consul of the United States, or notary public in any foreign country. (Rev. Stat. 1871, p. 561.) *Married women*—No private examination required.

MARYLAND.—*Execution*—Every deed conveying real estate shall be signed and sealed by the grantor or bargainer, and attested by at least *one* witness. *Acknowledgment*—In the county or city where the real estate or any part of it lies, before some one justice of the peace for said county or city, a judge of the Orphan's Court for said county or city, the judge of the Circuit Court for the county; the judge of the Superior Court, Court of Common Pleas, or Circuit Court for Baltimore City. Outside of county or city, but within the State, before any justice of the peace for the county or city where the grantor may be at the time of the acknowledgment; the official character of the justice being certified by the clerk of the Circuit Court or Superior Court, under his official seal; before any judge of the Circuit Court, for the circuit in which the grantor may be; or before the judge of the Superior Court, Court of Common Pleas, or Circuit Court, if the grantor be in Baltimore City. (Code, p. 132.) *Married women*—No private examination required. (Code, p. 327, Sec. 11.)

MASSACHUSETTS.—*Execution*—May be attested by witnesses, but not necessary. *Acknowledgment*—May be made before any justice of the peace in this State, or before any justice of the peace, magistrate, or notary public, or commissioner appointed for that purpose by the governor, within the United States, or in any foreign country, or before a minister or consul of the United States in any foreign country. (Rev. Stat. p. 467.) By Laws 1867, Chap. 250, notaries are authorized to take acknowledgment of deeds; and acknowledgments hereto-

fore made before notaries were declared valid. *Married women*—No private acknowledgment by.

MICHIGAN.—*Execution*—Two witnesses are required to attest and sign. *Acknowledgment*—May be made before any judge or commissioner of a Court of Record, or before any notary public, justice of the peace, or master in chancery within the State. (Compiled Laws, p. 1342.) The Comptroller of Detroit is authorized to take. (Laws 1857, p. 91, Sec. 21.) *Married women*—When any married woman, residing in this State, shall join with her husband in a deed of conveyance of real estate, situate within this State, the acknowledgment of the wife shall be taken separately and apart from her husband; and she shall acknowledge that she executed such deed freely and without any fear or compulsion from any one. (Comp. Laws, p. 1343.)

MINNESOTA.—*Execution*—To be executed in the presence of two witnesses, who shall subscribe their names as such. *Acknowledgment*—Judges of the Supreme and District Courts and Courts of Probate, the clerks of said Courts, notaries public, justices of the peace, registers of deeds and Court commissioners, are authorized to take the acknowledgment of deeds and other instruments in writing, within their several and respective jurisdictions: *provided*, that when any officer, having or using a seal of office, takes an acknowledgment, he shall affix his seal to the instrument so acknowledged. (2 Bissell, 951.) *Married women*—No private examination required.

MISSISSIPPI.—*Execution*—Witnesses may attest, but are not required. *Acknowledgment*—By a judge of the Supreme Court. (Rev. Code, 1871, Sec. 404.) Any judge of the Circuit Court, any chancellor, any clerk of a Court of Record, who shall certify such acknowledgment or proof, under the seal of his office; or any justice of the peace, or member of the board of county supervisors, whether the lands conveyed be within his county or not. (Code, Sec. 2310.) By Law April 5th, 1872, notaries can take acknowledgments. *Married women*—A private examination required to pass any title, or relinquish right of dower. (Sec. 2315.)

MISSOURI.—*Execution*—Witnesses may attest, but not necessary. *Acknowledgment*—Before some Court having a seal, or some judge, justice, or clerk thereof; notary public, or some

justice of the peace of the county in which the real estate conveyed or affected is situated. (1 Wagner's Stat. p. 274.) No acknowledgment of any instrument in writing conveying real estate, or whereby any real estate may be affected, shall be taken, unless the person offering to make such acknowledgment shall be personally known to at least one judge of the Court, or to the officer taking the same, to be the person whose name is subscribed to such instrument as a party thereto, or shall be proved to be such by at least two credible witnesses, and no acknowledgment of a *married woman* shall be taken unless she shall first be made acquainted with the contents of such instrument, and shall acknowledge, on an examination, apart from her husband, that she executed the same freely and without compulsion or undue influence of her husband. (1 Wagner, p. 275.)

NEBRASKA.—*Execution*—Must be signed by the grantor, being of lawful age, in the presence of at least *one* competent witness, who shall subscribe his name as a witness thereto. (Gen. Stat. p. 872.) *Acknowledgment*—Must be made or proved, if in this State, before a judge or clerk of any Court, or some justice of the peace or notary public therein; but no officer can take any such acknowledgment or proof out of his State jurisdiction. (Gen. Stat. p. 873.) *Married women*—No private examination required.

NEVADA.—*Execution*—Witnesses are not required. *Acknowledgment*—By some judge or clerk of a Court having a seal, or some notary public or justice of the peace: *provided*, when the acknowledgment is taken before a justice of the peace in any other county than that in which the real estate is situated, the same shall be accompanied with the certificate of the clerk of the District Court of such county, as to the official character of the justice taking the proof or acknowledgment, and the authenticity of his signature. *Married woman*—Required to make a private acknowledgment, without the hearing of her husband.

NEW HAMPSHIRE.—*Execution*—To be signed and sealed by the party granting, and attested by *two* or more witnesses. *Acknowledgment*—Before a justice, notary public, or commissioner, or before a minister or consul of the United States in a foreign country. (Gen. Stat. p. 251.) *Married women*—No private examination required.

NEW JERSEY.—*Execution*—Witnesses are not necessary. *Acknowledgment*—Before the chancellor of the State, or one of the justices of the Supreme Court, or one of the masters in chancery, or one of the judges of any of the Courts of Common Pleas of this State, (Nixon's Dig. p. 144) and before commissioners in the State appointed for this purpose by the governor. (Nixon's Dig. p. 153.) *Married women*—To acknowledge, after contents of instrument are made known to her, apart from her husband, that she signed, sealed, and delivered the same as her voluntary act and deed, freely, without any fear, threats, or compulsion of her husband.

NEW YORK.—*Execution*—Witnesses are not necessary if deed is acknowledged. *Acknowledgment*—Before the justices of the Supreme Court, judges of County Courts, mayors and recorders of cities, or commissioners of deeds (justices of the peace in towns). (2 R. S. 6th Ed. 1139.) Also, before notaries public, who may take and certify without seal. (Laws 1859, Chap. 360.) Also before surrogates, justices of the Marine Court, and the District Courts in New York city; the judge of the Court of Arbitration in New York city, clerk of the City Court of Brooklyn, justices of the Justices' Courts in the city of Troy, and in the county of Albany, or justices of the Superior Court of the city of Buffalo. (Laws 1851, p. 331; 1863, pp. 91, 880; 1874, p. 732; 1875, pp. 123, 574.) *Married women*—To make private acknowledgment to relinquish dower.

NORTH CAROLINA.—*Execution*—No conveyance of land shall be good and available in law unless the same shall be acknowledged by the grantor, or proved on oath by one or more witnesses, and registered in the county where the land shall lie, within two years after the date of the said deed. (Battle's Dig. p. 351. *Acknowledgment*—In the State before probate judge, justice of the Supreme Court, or notary public. *Married women*—Private examination required. (Battle's Dig. p. 355.)

OHIO.—*Execution*—Must be signed and sealed by the grantor or grantors, maker or makers, and such signing and sealing shall be acknowledged by such grantor or maker in the presence of *two* witnesses, who shall attest such signing and sealing, and subscribe their names to such attestation. (1 Swan.

& C. 459.) *Acknowledgment*—Before a judge of the Supreme Court, or of the Court of Common Pleas, a justice of the peace, notary public, mayor, or other presiding officer of an incorporated town or city, who shall certify such acknowledgment on the same sheet on which such deed, mortgage, or other instrument of writing may be printed or written. *Married women*—The officer before whom the acknowledgment is made shall examine the wife separate and apart from her husband, and shall read, or otherwise make known to her, the contents of such deed, mortgage, or other instrument of writing, and if, upon such separate examination, she shall declare that she did voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith, such officer shall certify such examination and declaration of the wife. (1 Swan & C. 462.)

OREGON.—*Execution*—Shall be executed in the presence of two witnesses, who shall subscribe their names as such. *Acknowledgment*—Before any judge of the Supreme Court, county judge, justice of the peace, or notary public, within the State. (Gen. Laws, p. 516.) *Married women*—A husband and wife may, by their joint deed, convey the real estate of the wife in like manner as she might do by her separate deed if she were unmarried, but the wife shall not be bound by any covenant contained in such deed. (Gen. Laws, p. 515.)

PENNSYLVANIA.—*Execution*—Witnesses usually attest, but if the grantor makes the acknowledgment, they need not attest. *Acknowledgment*—Before one of the judges of the Supreme Court, or before one of the justices of the Court of Common Pleas of the county where the lands conveyed lie. (Brightly's Purdon's Dig. p. 313.) The mayor and recorder of Philadelphia may take, in any part of the Commonwealth (p. 314). Each alderman of the city of Philadelphia can take in any part of the State, and a justice of the peace in his proper county. Notaries public, since 1863, are authorized to take acknowledgments (p. 1297). *Married women*—Private examination required.

RHODE ISLAND—*Execution*—Witnesses not necessary. *Acknowledgment*—Before a senator, judge, justice of the peace, notary public, or town clerk; and if the person conveying the same shall be without this State, in the military or naval service

of the United States, the same shall be acknowledged before any colonel, lieutenant-colonel, or major in the army, or before any officer in the navy not below the grade and rank of lieutenant-commander. *Married women*—A private examination is required, when the deed or instrument is to be explained to her, and she shall declare she does not wish to retract the same. (Gen. Stat. p. 330.)

SOUTH CAROLINA.—*Execution*—No witnesses required. *Acknowledgment*—Before a justice of the Supreme Court, a trial justice, or notary public, or commissioner of deeds. (Rev. Stat. p. 422.) *Married women*—Private acknowledgment required.

TENNESSEE.—*Execution*—Witnesses are not necessary. *Acknowledgment*—Shall be made before the clerk, or legally appointed deputy clerk of the County Court of some county in the State. (Stat. Sec. 2039.) And by Sec. 2039*a*, notaries are given power to take. *Married women*—A privy examination required. (Sec. 2486*b*.)

TEXAS.—*Execution*—The conveyance to be in writing, sealed and delivered; and any instrument to which the person making the same shall affix a scroll, by way of seal, shall be adjudged and holden to be of the same force and obligation as if it were actually sealed. (Paschal's Dig. Art. 997.) *Acknowledgment*—Judges of the Supreme and District Courts, chief justice of the County Courts, clerks of the County Courts, notaries public. (Paschal's Dig. Arts. 1007, 1252.) *Married women*—To make a private acknowledgment. (See form in Appendix.)

VERMONT.—*Execution*—All deeds and other conveyances of lands, or of any estate or interest therein, shall be signed and sealed by the party granting the same, and signed by two or more witnesses. *Acknowledgment*—Before a justice of the peace, town clerk, notary public, or master in chancery. *Married women*—No private acknowledgment required. (Rev. Stat. p. 448.)

VIRGINIA.—*Execution*—Witnesses are not necessary. *Acknowledgment*—Before a justice or notary public. (Code, p. 569.) *Married women*—Are required to make a separate and private acknowledgment.

WEST VIRGINIA.—*Execution*—Witnesses are not required.

*Acknowledgment*—Before a justice, notary public, recorder, prothonotary, or clerk of any Court within the United States, or commissioner appointed within the same by the governor. (See form in Appendix.) *Married women*—To have a private examination. (Code, p. 470.)

WISCONSIN.—*Execution*—Deeds executed in this State, of lands or of any interest in lands therein, shall be executed in the presence of *two* witnesses. *Acknowledgment*—Before any judge, commissioner of a Court of Record, clerk of the Board of Supervisors, notary public or justice of the peace, clerk of the Circuit Court, or the clerk of the Municipal Court of the city and county of Milwaukee. (2 Taylor's Stat. p. 1143.) *Married women*—No private examination required.

## ACKNOWLEDGMENT OUT OF A STATE, BUT WITHIN UNITED STATES.

An acknowledgment may be taken out of a State, but within the United States, before any commissioner of the State where the land is; and as commissioners are appointed by the States to reside in other States for this purpose, one can generally be found. In addition, notaries public are authorized, by the laws of nearly all our States, to take the acknowledgment of deeds for record in other States. When a notary takes the acknowledgment to be recorded out of the State, a certificate should be attached, to show he was actually such notary, and certify to the genuineness of his signature. The States and Territories where an acknowledgment before a notary in another State will not be received are:

Arizona, which requires the acknowledgment, without the Territory, and within the United States, to be before "some judge, or clerk of any Court of the United States, or of any State or Territory having a seal, or by any commissioner appointed by the governor of this Territory for that purpose" (Compiled Laws, p. 360); Delaware, Florida, Georgia, Idaho, Louisiana, Mississippi, New Mexico, North Carolina, Utah, and Washington Territory.

The provision of the California Civil Code, Sec. 1182, is as follows: "The proof or acknowledgment of an instrument may

be made without this State, but within the United States, and within the jurisdiction of the officer, before either: 1. A justice, judge, or clerk of any Court of Record of the United State; or, 2. A justice, judge, or clerk of any Court of Record of any State; or, 3. A commissioner appointed by the governor of this State for that purpose; or, 4. A notary public; or, 5. Any other officer of the State where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment."

The laws of New York allow acknowledgments to be made before the same persons. In addition, an acknowledgment may be made before the mayor of any city in the United States. (Laws 1845, p. 89.)

It will generally be found that the persons designated in the California Civil Code as capable of taking acknowledgments out of the State, are also permitted to do the same by other States, with the exception of notaries public, before referred to.

### ACKNOWLEDGMENTS OUT OF THE UNITED STATES.

Generally, ministers and consuls of the United States, abroad, can take acknowledgments to be recorded here; and also judges of Courts of Record. The provision of the Civil Code of California, Sec. 1183, will indicate with sufficient certainty the officers that are generally permitted to take acknowledgments out of the United States. The Code provides an acknowledgment may be before: 1. A minister, commissioner, chargé d'affaires of the United States resident and accredited in the country where the proof or acknowledgment is made; or, 2. A consul or vice-consul of the United States, resident in the country where the proof or acknowledgment is made; or, 3. A judge of a Court of Record of the country where the proof or acknowledgment is made; or, 4. Commissioners appointed for such purpose by the governor of the State, pursuant to special statutes; or, 5. A notary public.

By statutes of New York, acknowledgments in foreign countries may be made before any minister, chargé d'affaires, consul, vice-consul, deputy consul, consular agent, vice-consular agent, commercial agent, or vice-commercial agent of the United States Government, resident in any foreign port or country, or before any

commissioner of deeds for the State of New York in any foreign city. (1 R. S. 757; Laws 1816, p. 118; 1863, p. 449; 1865, p. 776; 1875, p. 119.)

In CANADA, deeds of property in New York may be proved or acknowledged in Canada before a judge of the highest Court in Upper or Lower Canada (Laws 1829, p. 348); also before any United States consul, the judge of any Court of Record, or the mayor of any city within the Dominion who will certify the same. If the proof or acknowledgment be taken by a judge, there must be attached a certificate, under the name and seal of the clerk of the Court, that the judge is a judge thereof; that such Court has a seal; that he is the clerk thereof; that he is well acquainted with the handwriting of such judge, and verily believes his signature genuine. (1 Laws 1870, p. 503.)

In GREAT BRITAIN and IRELAND, the party may acknowledge before the mayor of London, Dublin, Edinburgh, or Liverpool, or before the officers above named. (1 R. S. 757.)

## CHAPTER V.

### AFFIDAVITS.

§ 50. Authority to take given notaries by statute.
§ 51. Definition of affidavit.
§ 52. The venue.
§ 53. Signature by affiant.
§ 54. Oath and jurat.
§ 55. Officer qualified to take.
§ 56. As to the use of a seal

**§ 50. The authority to take affidavits is given to notaries by statute** in all our States; but it should be remembered this authority is one purely derived from statute law, and did not appertain to the office originally; and therefore Courts cannot take judicial notice of the fact that notaries are authorized to take affidavits, outside of the jurisdiction of those Courts. So the Court say in Keefer *v.* Mason:[1] "The power to administer oaths is not one of the incidents of the office of notary public under the general law merchant, nor was it, as far as we can ascertain, under the Roman law, from which the office is derived. Where that power is annexed to the office, it is so by virtue of positive enactment, and we cannot presume its existence in the absence of all proof or ground for presumption."[2] It is not usual for notaries to have this power in other countries; they do not exercise it in Canada, for there are "commissioners of affidavits" appointed for that purpose.[3]

It follows, that an affidavit taken out of the jurisdiction of the Court cannot be recognized, unless the authorized and official character of the officer is authenticated.[4] So it was held, in England, that when an affidavit is made before a notary abroad, the signature of the notary must be verified before the affidavit can be admitted.[5] It is required that the signature shall be

[1] 36 Ill. 408.
[2] To the same point, Blanchard *v.* Bennett, 1 Or. 328.
[3] Consolidated Stat. Canada, p. 889.
[4] Behn *v.* Young, 21 Ga. 207.
[5] In re Davis' Trusts, L. R. 8 Eq. 98.

verified by a consul; but affidavits on behalf of the plaintiff, taken before a notary public in America, at a place 120 miles distant from the residence of any British consul, were allowed to be filed by the clerk of records and writs, with the written consent of the defendant.[1]

In Haggett *v.* Iniff,[2] leave was asked in the Court of Chancery to file certain affidavits, which had been sworn to at Geneva, in the county of Ontario, in the State of New York, before one Allen, a notary public of that place. In support of the application there was read a certificate, signed by the English consul at New York, that Allen was, at the date of the certificate, a notary public in and for the State of New York, to whose official act credit was due. On a former occasion this affidavit was refused, because it did not appear a notary public had power to take affidavits; but on this occasion it was shown, by the evidence of the consul-general of the United States in London, that, according to the laws of the United States, a notary public was duly qualified to administer oaths and take affidavits in any law proceedings in that county. Leave was then granted to file the affidavits.

**§ 51. Definition of affidavit.**—An affidavit is defined in one case to be an oath in writing sworn before and *attested* by him who has authority to administer the same, and hence, if the jurat is not signed, that which purports to be an affidavit is a mere nullity.[3]

In Shelton *v.* Berry,[4] it is defined to be a voluntary oath reduced to writing, and taken before some officer who has authority to administer and certify the same. The distinction between an affidavit and a deposition is given in Stimpson *v.* Brooks.[5] It is there said: "Deposition is a generic expression, embracing all written evidence verified by oath, and thus includes affidavits, but in legal language a distinction is maintained in Courts of Law and Chancery between depositions and

[1] Lyle *v.* Elwood, L. R. 15 Eq. 67.

[2] 31 Eng. L. & Eq. 202. Decided in 1854.

[3] Knapp *v.* Duclo, 1 Mich. (N. P.) 189. The letters "J. P." mean a justice of the peace; they are well-known abbreviations, and in common use. Shattuck *v.* People, 4 Scam. 478.

[4] 19 Tex. 154.

[5] 3 Blatchf. C. C. 456.

affidavits. A deposition is evidence given by a witness under interrogatories, oral or written, and usually written down by an official person; while an affidavit is the mere voluntary act of the party making the oath, and may be, and generally is, taken without the cognizance of the one against whom it is to be used."[1]

**§ 52. The venue.**—It is presumed, when no venue is stated, that the affidavit was taken within the jurisdiction of the officer taking the affidavit.[2] So it is held that the absence of a venue is not fatal to an affidavit, for the important thing is that it shall appear that the oath was administered by a person authorized to administer the same; and the omission to state the venue may be aided, when the affidavit is offered to be used in legal proceedings, by the presumption that the officer acted within his jurisdiction, and on a prosecution for perjury, by proof extrinsic to the paper.[3]

This proposition is not accepted by the New York Courts, for it has been held there that an affidavit without a venue, verifying a complaint taken before a commissioner of deeds whose residence is not mentioned, is a nullity, and no presumption arises that an affidavit has been made at any particular place.[4]

**§ 53. Signature by affiant.**—In the absence of some statute or rule of Court requiring it, a signature of the affiant is not essential, though usual. If reduced to writing, and certified by

[1] In the Code of Civil Procedure of California, Sec. 2003, an affidavit is defined to be "a written declaration under oath made without notice to the adverse party."

[2] Parker *v.* Baker, 8 Paige, 428; Mosher *v.* Heydrick, 45 Barb. 549; Perkins *v.* Collins, 3 N. J. Eq. 482. The venue is prima facie evidence of the place where the affidavit was taken, and helps out the omission of the place in the body of an affidavit. Belden *v.* Devoe, 12 Wend. 225, note; Hall *v.* Davis, 44 Ill. 497. The letters "ss" usually added to the venue are held not to be essential, though useful. They signify *to wit*, and fix the place more definitely where the affidavit is made, to show it is within the jurisdiction of the officer. 1 Chitty on Pl. 248; 1 Cow. Tr. 505.

[3] Young *v.* Young, 18 Minn. 90. In this case there are full citations of authorities.

[4] Lane *v.* Morse, 6 How. Pr. 394; Cooks *v.* Staats, 18 Barb. 407; Vincent *v.* People, 5 Park. Cr. 88; Thompson *v.* Burhans, 61 N. Y. 52.

the officer as having been duly sworn to, it is valid.[1] But where by the terms of a statute a signature is required, the affidavit must be subscribed by the affiant, or it is a nullity. Thus, a statute requiring a creditor or claimant to take and subscribe an oath to his claim or charges, is not complied with by his subscription to the written memorandum of the claim or charge, followed by a certificate or jurat stating that the memorandum was subscribed and sworn to in open Court, but which certificate is not subscribed by the claimant or creditor, but only by an officer administering the oath.[2]

In Hathaway *v.* Scott,[3] in chancery, it was held that where the verification of a bill or petition in the form of an affidavit had not the name of the deponent subscribed to the foot of the affidavit, it was defective. But this decision was based on former rules in chancery, which required a deponent to subscribe his name or mark to the affidavit before it was certified by the master.

**§ 54. Oath and jurat.**—An affidavit must appear upon its face to have been taken before the proper officer and in compliance with all legal requisitions.[4]

So, a paper drawn in the form of an affidavit, and filed as one, but not signed by any officer authorized to administer the oath, cannot be treated as an affidavit.[5]

A certificate that deponent was "duly sworn" implies, until the contrary is shown, that he was sworn in such a manner as to render the oath binding upon the conscience.[6] In Ohio, a statute required the officer before whom an affidavit is taken, "to certify that it was sworn to or affirmed before him, and signed in his presence"; but in a case it appeared that the certificate was "subscribed and sworn to before me this 12th day of February,

[1] Millins *v.* Shaffer, 3 Denio, 60; Shelton *v.* Berry, 19 Tex. 154; Watts *v.* Womack, 44 Ala. 605; Turpin *v.* Eagle Creek Co. 48 Ind. 45; Brooks *v.* Snead, 50 Miss. 416; Ede *v.* Johnson, 15 Cal. 53; Kenyon *v.* Virgil, 3 Johns. 540.

[2] Nave *v.* Ritter, 41 Ind. 301.

[3] 11 Paige, 173.

[4] State *v.* Greens, 15 N. J. L. 88; Ladow *v.* Groom, 1 Denio, 429; Davis *v.* Rich, 2 How. Pr. 86.

[5] State Bank *v.* Hinckliffe, 4 Ark. 444; Cantwell *v.* State, 27 Ind. 505; McDermaid *v.* Russell, 41 Ill. 490.

[6] Fryatt *v.* Lindo, 3 Ewd. 239.

A. D. 1859"; and it was objected that it did not comply with the statute in stating that it was in the officer's presence, but it was held that it was sufficient, as the expression used implied the act was done in the presence of the officer.[1] But where the jurat of an affidavit, taken before a justice of the peace, was "sworn and subscribed this," etc., omitting the words "before me," it was decided that the omission of such words rendered the affidavit a nullity.[2]

Where an officer certifies that more persons than one took an oath, it is not necessary that he should certify that they "severally" swore, the use of that word not affecting the sense.[3]

In Kleber *v.* Block,[4] the following affidavit was held sufficient:

"STATE OF INDIANA, Allen County, ss.

"Personally came before the undersigned, a notary public of said county, Christopher Kleber, who upon his oath saith he is justly indebted to the within Adam Block, in the sum specified in the within power of attorney, and that he does not confess judgment thereon for the purpose of defrauding his creditors.

"CHRISTOPHER KLEBER.

"Witness my hand and seal, February 19th, 1859.

"[SEAL] GEO. K. HENTMAN, Notary Public.

It was contended that the foregoing affidavit was bad for want of a jurat. The Court, however, held that the signature and seal of the notary apply to the jurat, to the certifying part of the writing signed by Block, and was therefore sufficient.

**§ 55. Officer qualified to take.**—When the statute does not designate the particular officer by whom a required oath may be administered and certified, it may be taken before any officer having general authority to administer and certify oaths.[5] Whether the attorney of a party, who is also a notary public, can take the affidavit to a pleading in the cause is, as a general rule, denied;[6] but if he only be counsel in the cause, and not

[1] Sargent *v.* Townsend, 2 Disney, 472.
[2] Smart *v.* Howe, 3 Mich. 590.
[3] Randall *v.* Baker, 20 N. H. 335.
[4] 17 Ind. 294.
[5] Wood *v.* Jefferson Co. Bank, 9 Cowen, 204.
[6] Taylor *v.* Hatch, 12 Johns. 340; Den *v.* Geiger, 4 Halst. 225.

the attorney of record, he is not disqualified.[1] It is held, however, in California, in Kuhland *v.* Sedgwick,[2] that the attorney of the plaintiff, being a notary public, may take the affidavit verifying the complaint; and in Minnesota, in Young *v.* Young,[3] it was held that the attorney of record, being a notary public, could take an affidavit of a service of summons.

**§ 56. As to the use of a seal.**—Whether a seal is required or not by the notary will depend upon the statutory requirements of his State; but, as a general rule, in all our States, a seal is required. Thus, in Iowa, in Tunis *v.* Withrow,[4] a seal was held indispensable, the Court saying: "We consider that the official acts of a notary public should be authenticated by seal and signature, and that an affidavit is not proved to have been made unless the jurat is authenticated by both such seal and signature." In Stout *v.* Slattery,[5] it was held, that if an oath be administered by a notary public, his signature to the jurat, without his seal of office, will be sufficient within the county of his residence; but if it be used out of the county, his seal of office, or some other evidence of his official character, will be indispensable.

[1] Willard *v.* Judd, 15 Johns. 531; People *v.* Spalding, 2 Paige, 326.
[2] 17 Cal. 123.
[3] 18 Minn. 90.
[4] 10 Iowa, 305. To the same point, Chase *v.* Street, Id. 593.
[5] 12 Ill. 162.

# CHAPTER VI.

## DEPOSITIONS.

§ 57. Notaries may take depositions.
§ 58. As to the caption.
§ 59. Mistakes in names of parties in caption.
§ 60. Should state at whose request deposition taken.
§ 61. The certificate generally.
§ 62. Immaterial omissions in the certificate.
§ 63. As to swearing the witness.
§ 64. The identity of the witness.
§ 65. Writing out the deposition.
§ 66. The manner of writing out.
§ 67. Language of the deposition.
§ 68. Presence of parties.
§ 69. Place where taken.
§ 70. Powers of notaries in taking depositions.
§ 71. Adjournment.
§ 72. The deposition should be subscribed.
§ 73. Certification of official character of officer.
§ 74. Certain States require a certification.
§ 75. Return of the deposition.

**§ 57. Notaries may generally take depositions;**[1] and it will therefore be useful to examine some of the decisions of the Courts, touching their duties in this respect. It is not intended to treat in general the subject of depositions, which is now a large topic in the law, but merely to refer to those decisions regarding the execution and return of a commission to take the deposition of a witness. A great many decisions on this point are given on some particular form required by a statute, which may not be general; but, as far as possible, there will be examined, in the present chapter, cases that have a general application, whatever be the special requirements of the statute. Whenever a decision is based on any special requirement, not of general use, the fact will be noted.

In the forms, it will be found there are two particulars requiring careful attention: that is, the proper writing of the caption, and the certificate at the end of the deposition, where the

[1] As to what States permit depositions to be taken by notaries, see Sec. 20.

officer states in substance the steps taken; and the mode of execution, in taking the witness' deposition.

**§ 58. As to the caption.**—The caption should state the title of the cause, the Court, the names of the parties, and at whose instance the deposition was taken.[1] In New Hampshire, it is held that the caption of a deposition should set forth in what Court the action is pending, a sufficient description of the house or office where the deposition is taken, that the statutory oath was administered, and whether, if the defendant was not present, he objected or not.[2] But this is more than is required generally in other States. However, the title of the cause should appear in the caption; a mere recital that the deposition is taken "in compliance with the annexed commission" is not sufficient.[3] When the deposition does not thus show any particulars to connect it with the cause in which it is offered, it should be refused admission in evidence.[4]

Some decisions are strict in requiring the names of the parties to the suit to appear either in the caption or certificate. So it is held, in Waskern *v.* Diamond,[5] that great strictness is required in depositions taken under the Act of Congress of 1789, and if the names of all the parties to the suit do not appear in the caption, or some part of the deposition, the omission is fatal. But a deposition will be admissible in evidence, although the name of the case did not appear in the caption of the answer, it appearing at the head of the interrogatories and in the body of the commission, and the whole being attached together.[6]

**§ 59. Mistakes in names of parties in the caption,** when not sufficient to raise any doubt as to their identity, will not be fatal; as when the Christian name of one of the party defendants was written Edward instead of Edwin, the deposition was received in evidence.[7] So a mistake in the initial let-

[1] Peyton *v.* Veith, 2 Cranch C. C. 123; Knight *v.* Nichols, 34 Me. 208; Haskins *v.* Smith, 17 Vt. 263; Whitney *v.* Sears, 16 Id. 587.
[2] Rand *v.* Dodge, 17 N. H. 343.
[3] Slaughter *v.* Rivenbank, 35 Tex. 68.
[4] Plimpton *v.* Somerset, 42 Vt. 35.
[5] 1 Hemp. 701.
[6] Johnson *v.* Clarke, 22 Ga. 541; Henderson *v.* Cargill, 31 Miss. 367.
[7] Mann *v.* Birchard, 40 Vt. 326.

ter of the middle name of one of the parties will not be sufficient to exclude the deposition;[1] and it is no ground for rejecting a deposition because the plaintiff is named therein C. M. Grimes, instead of Chilton M. Grimes, as in the pleadings and *dedimus;*[2] nor will it be excluded because the caption gives the names of the defendants as A. B. and C. D. Smith.[3]

Where the plaintiffs in the suit were described in the writ as "a corporation duly established by an act of the legislature of the State of Connecticut," and the caption of the deposition offered as evidence described the plaintiffs, at whose request the deposition was taken, as "a corporation established in the State of Massachusetts," it was held that this discrepancy was no cause for rejecting the deposition.[4]

**§ 60. The caption should state at whose request the deposition was taken.**—It is held, in Massachusetts, that if the caption does not state at whose request the deposition was taken, it is imperfect, and the deposition cannot be used.[5] This decision, however, was based on their statute, which requires that the officer shall insert the names of the person at whose request the deposition was taken.[6] This will, therefore, be authority, whenever a similar statutory requirement exists. It has been decided in Maine, where there was no such statutory requirement, that a deposition is not to be rejected merely because its caption omits to state at whose request it was taken.[7] The Court, in the case, said: "But in R. S. Chap. 133, Sec. 17, the facts required to be stated therein are specifically set forth, and this is not among those statutory requirements, and we have neither the power nor the inclination to increase their number."

In a Vermont case, the admission of a deposition taken in New Hampshire was objected to on account of the informality of the caption, which did not contain in the proper place the name of the person at whose request it was taken; but the Court said: "The certificate of the magistrate states that the deposition was taken

[1] Field *v.* Tenny, 47 N. H. 513.
[2] Grimes *v.* Martin, 10 Iowa, 347.
[3] Adams *v.* Flanagan, 36 Vt. 400.
[4] Hayward Rubber Co. *v.* Duncklee, 30 Vt. 29.
[5] Welles *v.* Fish, 3 Pick. 74.
[6] Gen. Stat. 1860, p. 676.
[7] Knight *v.* Nichols, 34 Me. 208.

at the request of the plaintiff, without naming him, but in the other part of the same certificate it is stated who the plaintiff was. This, we think, removes all doubt in regard to the matter, and the place where it was to be used is sufficiently apparent to make it admissible." [1]

**§ 61. The certificate generally** states the witness was sworn to testify the truth of his knowledge of the matter in controversy, in the cause for which taken; that he was examined, and his examination reduced to writing, read to and subscribed by him in the presence of the officer, at the time and place specified in the notice.[2] The statutory requirements must be substantially complied with to render the deposition available in evidence.[3] Where a notary's certificate stated that the depositions of witnesses were "by me corrected, as by them requested," before their signature, it is sufficient, without stating that they were read to the witness before signing.[4]

Where a commissioner certifies that the witness was personally known to him, "and, after being duly sworn, deposed as set forth above in his answers to the annexed interrogatories; and that said answers, as above set forth, were reduced to writing, read over to, approved and signed by, said witness in his presence," the certificate shows, prima facie, a substantial compliance with the requisites of the statute.[5] It is not necessary that the names of the witnesses examined should be stated in the certificate. It is sufficient if they are referred to "as the above named deponents." [6]

**§ 62. Immaterial omissions in the certificate** will not invalidate it. Thus, the omission of the date in the final certificate appended to a deposition, to the effect that it was read over to the witness, is of no consequence when another certificate appended to the deposition gives the date when it was sworn to

[1] Harrison *v.* Nichols, 31 Vt. 709.

[2] Moss *v.* Booth, 34 Mo. 316; Stetson *v.* Lyons, 34 Ala. 140; Thomas *v.* Wheeler, 47 Mo. 363.

[3] McCrellis *v.* McCrellis, 38 Vt. 135; Dye *v.* Bailey, 2 Cal. 383; Williams *v.* Chadbourne, 6 Id. 559.

[4] Higgins *v.* Wortel, 18 Cal. 330.

[5] Roberts *v.* Fleming, 31 Ala. 683.

[6] Prather *v.* Pritchard, 26 Ind. 65.

and subscribed; especially when it appears that the deposition was not required to be taken at any given time.[1] So, under a statute which required that a deposition should be carefully read to and subscribed by the witness, if the certificate of the officer who took it is that it was read to the witness, omitting the word "carefully," the deposition will not, therefore, be excluded. It will be presumed that the officer performed his duty under the statute.[2] The caption of a deposition stated "the adverse party was duly notified and was not," omitting the word "present," it may be obviously understood, and it cannot be regarded as substantially defective.[3] And a deposition was held not to be insufficient because the officer taking it omitted the word "presence" from his certificate—that the deposition "was reduced to writing in my, and by the said deponent sworn to and subscribed in my presence."[4]

**§ 63. As to swearing the witness.**—The statutes require that the fact that the witness was sworn shall be certified to by the officer taking the deposition; and where it appears that the deponent was not duly sworn, the deposition will be rejected.[5] Many of the decisions are very strict on this requirement, holding there must be a literal compliance with the statute. Thus, when a statute required, as most of our statutes do, that a deponent shall be sworn "to testify the truth, and nothing but the truth, relating to the cause or matter for which the deposition is to be taken," and it was stated that "the deponent was first sworn according to law to the aforesaid deposition by him subscribed," the deposition was rejected.[6] But where the certificate to a deposition states that the deponent "was sworn to testify the whole truth of his knowledge touching the matters in controversy in the cause," it was held to be an immaterial deviation from the exact requirements of the statute in

[1] Elgin *v.* Hill, 27 Cal. 372.

[2] Sheldon *v.* Wood, 2 Bosw. 267.

[3] Kidder *v.* Blaisdell, 45 Me. 461.

[4] Stone *v.* Stilwell, 23 Ark. 444.

[5] The witness should be sworn before giving his deposition. Armstrong *v.* Burrows, 6 Watts, 266; Stonebreaker *v.* Short, 8 Penn. St. 155. But in Vermont it is immaterial whether sworn before or after. Barron *v.* Pettis, 18 Vt. 385.

[6] Parsons *v.* Huff, 38 Me. 137; Brighton *v.* Walker, 35 Me. 132; Erskine *v.* Boyd, Id. 511; Fabyan *v.* Adams, 15 N. H. 371; Rainer *v.* Haynes, 1 Hemp. 689; Putnam *v.* Larrimore, Wright, (Ohio) 746; Simpson *v.* Carleton, 1 Allen, 109.

such cases.[1] It has been held that a certificate that the depo nent was "duly sworn" according to law, imports that the form of the statute was properly observed.[2]

The omission of a commissioner to show in his formal certificate that the witness was sworn, is no ground for suppressing the deposition, when the commissioner shows in the preamble to the deposition that the witness was by him cautioned and sworn to speak the truth and nothing but the truth, the whole truth and nothing but the truth, in answer to the interrogatories.[3]

A liberal rule is held in Massachusetts regarding a deposition taken out of the State. It is held that if the deponent was sworn, it is not necessary to follow the statutory form.[4]

**§ 64. The identity of the witness** is in some places required to be certified to, as in Alabama, California, Delaware, and Texas. Unless the commissioner certifies to his personal knowledge of the identity of the witness, or that proof thereof was made before him, the deposition is inadmissible.[5]

**§ 65. Writing out the deposition.**—The statutes forbid the writing out of the answers in the deposition, by any one a party to, or interested in, the suit.[6] Thus, when it appeared that a deposition had been written by the attorney of the party in whose favor it was to be read, instead of by the commissioner designated in the notice, and that the adverse party was not present at the time, it was held the deposition should be excluded.[7] It is held that a party in whose behalf a deposition is taken, or his attorney, may write the questions, but not the answers thereto.[8] There is, however, no objection to a witness writing

[1] Welborn *v.* Swain, 22 Ind. 194.

[2] Dennison *v.* Benner, 41 Me. 332; New Jersey Ex. Co. *v.* Nichols, 3 Vroom, 166; Ballard *v.* Perry, 28 Tex. 347. The officer taking a deposition must certify that the witness was first duly sworn, but the certificate of that fact may be made either at the end or at the commencement of the deposition. House *v.* Elliot, 6 Ohio St. 497; S. P. Doe *v.* King, 4 Miss. 125.

[3] Broadnax *v.* Sullivan, 29 Ala. 320.

[4] Stiles *v.* Allen, 5 Allen, 320; Quinley *v.* Atkins, 9 Gray, 370.

[5] Buford *v.* Gould, 35 Ala. 265; Farrelly *v.* Maria, 34 Id. 284.

[6] Steele *v.* Dart, 6 Ala. 798. But see Donoho *v.* Petil, 1 Miss. 440.

[7] Hurst *v.* Harpin, 21 Iowa, 484. See Bank *v.* Woods, 11 Penn. St. 99.

[8] Snyder *v.* Snyder, 50 Ind. 492.

his answers himself.[1] The proper person to write out the deposition is the officer commissioned to take it. It was therefore held that depositions taken under a commission executed by commissioners, one of whom could not write, were not admissible in evidence.[2] But when it appeared that the magistrate who took a deposition, not being a ready penman, called in a third person, who was disinterested, who wrote the answers of the witness, the magistrate being present and supervising, it was held that the deposition might answer the requirements of the statute, but that such a practice might be liable to abuse, and should not be encouraged.[3]

If a deposition is written in the absence of the magistrate, and the other party cross-examines the witness, and does not object to the informality at the time, the deposition may be put in evidence.[4]

When a commissioner is appointed to take depositions, it is improper for the witness to produce his deposition written by himself, not in the presence of the magistrate.[5]

**§ 66. The manner of writing out the deposition** is in a form to respond to certain numbered interrogatories, the answer being given to a certain interrogatory referred to. In California, it was held that there could be no objection to a deposition taken by a party in the State where the opposite party failed to appear, because it was in a narrative form, and not taken by question and answer.[6] Where the commissioner writes down the answers of two witnesses as one deposition, though it be more regular to write them separately, yet, if both have signed and sworn to everything written as answers to the several questions the commission is good.[7]

**§ 67. Language of the deposition.**—Depositions may be taken in a foreign language when the witnesses are unable to

[1] Carlyle *v.* Plumer, 11 Wis. 96; Shropshire *v.* Stevenson, 17 Ga. 622; Wilson *v.* Smith, 5 Yerg. 379.
[2] Austen *v.* Carey, 23 Ga. 4.
[3] Cushman *v.* Wooster, 45 N. H. 416.
[4] Logan *v.* Steele, 3 Bibb, 230.
[5] Foster *v.* Foster, 20 N. H. 208; McEntire *v.* Henderson, 1 Penn. St. 402.
[6] Pralus *v.* Pacific etc. Co. 35 Cal. 30.
[7] May *v.* Norton, 11 La. An. 714.

speak English; when introduced in Court they can be translated by a sworn interpreter.[1]

Where evidence is taken by a commission, and it appears by the answers that the witness does not understand English, the Court will presume, in the absence of proof to the contrary, that the commissioner understood the language of the witness.[2] But if the person taking a deposition does not understand the language of the witness, nor the witness his language, an interpreter must be sworn to interpret between them; and that fact must appear by the certificate of the person taking the deposition, and cannot be supplied by his affidavit taken afterward.[3]

**§ 68. Presence of parties.**—It is generally required that when the deposition is taken in the State where the trial takes place, it shall be on notice, and the certificate attached must certify if such notice was given. So, where a notary public, before whom a deposition was taken, certified that the adverse party, living more than twenty miles from the place of caption, was duly notified, and did not attend, it was held that this was sufficient evidence in the first instance of the fact of such notice, open, however, to contradiction.[4] It is not necessary to set forth in the caption that the taking commenced at the hour designated in the notice. It is sufficient if it be certified that it was taken at that hour.[5]

But when the deposition is taken out of the State, it is held to be improper for the party, his agent or attorney, to be present, except under consent or stipulation; and when the return stated that "H. C. G., Esq., being present on behalf of the plaintiff," the deposition should have been excluded.[6] In many of the forms, it will be found, it is required of the officer to certify

[1] Cavasos *v.* Gonzales, 33 Tex. 133.

[2] City etc. Ins. Co. *v.* Carrugi, 41 Ga. 660.

[3] Amory *v.* Fellows, 5 Mass. 219. The questions appended to a commission sent to Bremen were in English; the commissioners returned the answers in German, annexed to a German translation of the questions; the commission was objected to, on the ground that the return should have been in English, or accompanied by an English translation, but the objection was overruled. Kuhtmaf *v.* Brown, 4 Rich. S. C. 479.

[4] Lyon *v.* Ely, 24 Conn. 507.

[5] Scammon *v.* Scammon, 33 N. H. 52.

[6] Walker *v.* Barron, 4 Minn. 253.

as to this fact, as in Arkansas, Indiana, Kentucky, and Massachusetts.

**§ 69. Place where taken.**—When the deposition is taken on notice, the place must be definitely stated in the notice, and the return must show the deposition was taken at such place. Where a notice had been given that a deposition would be taken at the office of Squire Moore, and the caption and certificate attached showed that it was taken at the office of Enos Moore, it was held that the deposition should be suppressed, because it did not sufficiently appear that it was taken at the place named in the notice.[1] But in Wisconsin, in Fisk *v.* Tank,[2] it was held that a deposition is not invalidated for want of a venue or statement of the place of taking, either in its margin, or in the commissioner's certificate. But it appears that this deposition was taken out of the State, and the case agrees with the rule laid down.

If a subpœna issued by a notary for a witness to appear before him and give his deposition, fails to specify the precise locality where the notary will take the deposition, the witness will not be excused for non-attendance, if he is not misled thereby.[3]

**§ 70. Powers of notaries in taking depositions.**—Notaries have power, in a majority of our States, to take depositions by virtue of their office. This power clothes them with certain necessary authority, in order to properly discharge the duty committed to them. They have therefore the right to issue a subpœna for the attendance of a witness whose deposition is to be taken before them. But what further power do they possess? What can they do if the witness refuse to attend, or, attending, refuse to answer? In some places the statutes give express authority to an officer taking a deposition to enforce the attendance and answers of a witness; but even if the statutes are silent on this point, it must be a power incidental to the office with which the notary is clothed, for the time being, to enforce the attendance and the answers of a witness. Thus, in a late

[1] McClintock *v.* Crick, 4 Iowa, 453. [2] 12 Wis. 276.
[3] Keisher *v.* Ayres, 46 Cal. 82.

case in Kansas, the deposition of a party was to be taken before a notary public. The party attended before the notary, but refused to be examined, whereupon the notary committed him to the custody of the sheriff, as keeper of the common jail, for contempt. He was then brought up on a habeas corpus, and it was decided the committal was legal.[1] It is to be observed that the statute in Kansas does not expressly confer this power, only as it is incidental to the authority conferred on the officer to take depositions.

The same question has come before the Court on three occasions in Missouri. In Ex parte McKee,[2] it was held that a notary public, being an officer authorized to take depositions, has authority to commit a witness for refusing to answer any questions other than those which it is his personal privilege to refuse to answer. But in Ex parte Mallinkrodt,[3] it was held that a notary public has no power to commit a witness for refusing to produce books and papers under a *subpœna duces tecum*. I cannot but regard this decision as of very doubtful authority, in view of the previous case, and one presently to be noticed, for the distinction is purely arbitrary. In a late case in the same State, Ex parte Munford,[4] it was decided that in a pending suit a notary public has power to enforce the attendance of witnesses to give their depositions, and can compel them by imprisonment to answer any questions not violative of personal privilege. These decisions in Missouri are based upon the express power in their statute given to officers taking depositions. But it cannot be denied that officers who have power to issue a subpœna for witnesses to give their depositions before them must have, irrespective of any statutory express power, a right to enforce obedience to their subpœna, otherwise their official duties could not be properly discharged. The provisions of the Code of Civil Procedure, in California, give power to officers taking depositions to enforce obedience to their subpœna. In Sec. 2031, it is provided that depositions in the State may be taken before a judge, or officer authorized to administer oaths; then, in Sec. 1986, it is provided that a subpœna may issue in certain cases, one of which is to require the attendance out of Court before a

[1] In re Abeles, 12 Kan. 451.
[2] 18 Mo. 599.
[3] 20 Mo. 493.
[4] 57 Mo. 673.

judge, justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of the State, and such subpœna is issued by the officer before whom the attendance is required. In Sec. 1991, a provision is made for punishing, as for a contempt, by the officer issuing the subpœna, disobedience to the subpœna, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required.

Therefore, as notaries are empowered to take depositions, being officers authorized to administer oaths, they can exercise the power given officers in the last section. They cannot, however, exercise such power when acting under a foreign commission, for in such a case they are not authorized to issue a subpœna.[1]

It has been held in Indiana, and no doubt the same would be so held everywhere, that an officer taking a deposition cannot decide legal questions, as whether a witness be competent.[2]

**§ 71. Adjournments.**—Usually, the notice to take the deposition of a witness states that the meeting may be adjourned from day to day, until the deposition is completed; and an adjournment other than this, except with the consent of both parties, will be unlawful.[3] So, where a notice to take depositions recites that the taking will be commenced on a certain day, and continued from day to day thereafter until completed, an adjournment for a longer time will be unauthorized, and will subject the depositions so taken to suppression unless the opposite party appear and waive such objection.[4] But when a deposition was begun in the presence of both parties, but too late in the day to get through, and the witness was necessarily called off the next day, and the party against whom the deposition

[1] Code of Civil Proced. Sec. 2036.

[2] Carpenter *v.* Dame, 10 Ind. 125.

[3] Where notice is given to take depositions on a certain day, continuing from day to day until they are completed, if there is a continuance from day to day for several days in the taking of a deposition, it must appear upon the record what was done each day, and that there was good cause for the delay, or the deposition ought to be suppressed. Bracken *v.* March, 4 Mo. 74.

[4] Raymond *v.* Williams, 21 Ind. 241. See, to the same point, Parker *v.* Hayes, 23 N. J. Eq. 180; King *v.* State, 15 Ind. 64.

A commission directing commissioners to take a deposition on a certain day, and continue from day to day until completed, does not authorize them to adjourn to a day beyond the next succeeding. Harding *v.* Merrick, 3 Ala. 60.

was to be used would not agree on a future time to finish it, and it was then announced that some other deposition would be taken on the following day, so as to preserve the right to adjourn over until the next day, when the deposition of the first witness should be finished, the deposition thus completed on the third day was held admissible in evidence.[1]

It is irregular, in taking depositions, to adjourn from the place where the adverse party has been served with notice to attend, to another place in the absence of such party.[2] In Wixon *v.* Stephens,[3] it is held that the practice of adjourning the examination of witnesses by the commissioner, to another town from that designated for the purpose, without the consent of parties, is of questionable propriety, and not to be encouraged; but when a party did not attend at the time and place designated, and, owing to the absence of one of the witnesses, the commissioner adjourned the examination to another day and another place, within the county; and on such adjourned day proceeded to take the testimony, it was held that if the party had in any way been injured by the adjournment, his remedy was to apply to the Court to suppress the depositions.

The person authorized to take a deposition may adjourn the time of taking at his discretion, even though neither party appear at the time first appointed, provided a reasonable notice be given to the parties.[4]

**§ 72. The deposition should be subscribed,** or it cannot be admitted in evidence. So, where an officer taking a deposition does not certify that it was signed by the witness, it is not admissible in evidence.[5] A deposition purporting to set out the answers of a witness to the interrogatories and cross-interrogatories, but not subscribed by him, accompanied by a certificate of the commissioner stating that the said witness, "after having read over the answers of B, did solemnly swear that he would adopt them, but the steamboat on which he was going up the

[1] Jarboe *v.* Colvin, 4 Bush, 70.
The reason for the adjournment should be given. Kisskadden *v.* Grant, 1 Kan. 328.
[2] Beach *v.* Workman, 20 N. H. 379.
[3] 17 Mich. 518.
[4] Pindar *v.* Barlow, 31 Vt. 529.
[5] Thompson *v.* Haile, 12 Tex. 139.

river left before he could subscribe them after I had written them off," was held not admissible in evidence.[1]

**§ 73. Certification of official character of officer.**—The statutes are not uniform as to how the official character of the officer taking the deposition shall be made to appear. Many States do not insist upon anything further than the officer's own certificate as to his official character; this being accepted as prima facie evidence of his capacity as such officer to take the deposition.[2] Thus, a deposition purporting to have been taken in the State and county named in the commission, and certified by the person taking it, with his name, and the letters "J. P.," is sufficiently authenticated.[3] So, when the parties to a suit agree that a deposition may be taken at a certain place, during a certain month, before T, a notary public in another State, the deposition certified by T may be read by either party without other proof that T was a notary when the deposition was taken.[4] And a recent case in Nebraska holds that depositions taken in Illinois by a notary public, certified under his hand and official seal, may be read in evidence without further authentication.[5] The seal of a notary public, attesting his certificate to a deposition, need not be impressed upon wax; an impression upon the paper is enough.[6]

When the commission is directed to certain persons named therein, no authentication is required: their signatures and seals are sufficient; but it must appear that the person returning the deposition is the identical person to whom the commission was directed. Thus, a deposition directed to George Dunlair, but taken by George Dunbar, was held inadmissible in evidence, though Dunbar was the man intended.[7] And depositions taken before a commissioner of deeds in another State, appointed by

[1] Bell *v.* Chambers, 38 Ala. 660.

[2] Dean *v.* Dygert, 1 A. K. Marsh. 172; Clement *v.* Durgin, 5 Me. 9; Savage *v.* Balch, 8 Id. 27; Adams *v.* Graves, 18 Pick. 355; Allen *v.* Perkins, 17 Id. 369; State *v.* Kimball, 50 Me. 409; Hoover *v.* Rawlings, 1 Sneed, 287.

[3] Hobbs *v.* Shumates, 11 Gratt. 516.

[4] Sargent *v.* Collins, 3 Nev. 260.

[5] Martin *v.* Coppock, 4 Neb. 173.

[6] Myers *v.* Russell, 52 Mo. 26.

[7] Breyfogle *v.* Beckley, 16 S. & R. 264.

the State where the deposition is offered in evidence, are sufficiently authenticated by such commissioner's own certificate.[1]

**§ 74. Certain States require a certification of official character,** showing that the officer certifying to the deposition was in fact such officer as he claims to be. In the forms will be found the provisions of the statutes of the States where this is required. This certification is necessary where a commission is directed to an officer by his official designation, without naming the individual. Thus, by the laws of Colorado, when a judge or justice of the peace acts as a commissioner, his official character must be certified to under the great seal of the proper Court of the county or city where such deposition is taken.[2] So, in Illinois, when any deposition shall be taken by any judge, master in chancery, notary public, or justice of the peace out of the State, or other officer, the return shall be accompanied by a certificate of his official character, under the great seal of the State, or under the seal of the proper Court of record of the county or city wherein such deposition shall be taken.[3] Similar provisions will be found in the statutes of Iowa, Louisiana, Missouri, New Hampshire, and Virginia. In the States of Kansas, Nebraska, and Ohio, and in the Territory of Wyoming, the officers may certify with their own seals, if they have any, but if not, their official signatures must be authenticated.[4]

As we pointed out above, in Louisiana, when depositions are submitted, purporting to be taken before a justice of the peace, a certificate must accompany them showing that such person was in fact the officer he represents himself to be.[5] In New Hampshire, a certificate of a county clerk in New York, under the seal of the county, was held competent evidence to show that an individual, who had acted as a magistrate in taking a

[1] Johnson *v.* Cocks, 7 Ark. 672; Den *v.* Lloyd, 31 N. J. L. 395. At the conclusion of a commission, the commissioner signed his name "A B, Notary Public," but indorsed the commission as follows: "The execution of this commission appears in a certain schedule hereto annexed. A B, Comm'r." It was held that this was sufficient. Munroe *v.* Woodruff, 17 Md. 159.

[2] Rev. Stat. p. 313. Notaries cannot take depositions in this State under a commission.

[3] Rev. Stat. of 1874, p. 494.

[4] See statutory provisions of these States in the forms.

[5] Succession of Grant, 14 La. An. 795; Morrison *v.* White, 16 Id. 100

deposition, was, in fact, a justice of the peace.[1] In Wells *v.* Jackson etc. Co.,[2] it was held that the authority to take a deposition is sufficiently shown by proof that the person taking it was an acting commissioner or notary. In Vermont, it has been held that a deposition taken by a justice of the peace, under a foreign government, does not authenticate itself.[3]

**§ 75. Return of the deposition.**—In some of our States, it is required that the return of the commission shall be indorsed on the commission itself, and not attached to it on a separate paper; but where there is no statutory provision requiring it, the return may be made on a separate paper attached. So, when the return, instead of being indorsed upon the commission itself, was written upon one of the sheets appended by the commissioner, it was held sufficient.[4] In New York, in Pendell *v.* Coon,[5] it was held that the return of a commissioner to take testimony need not be indorsed on the commission itself, nor be on a paper containing the depositions annexed, or any part thereof; but where it is necessary, by reason of the paper containing the depositions being filled thereby, to annex an independent sheet, the return may be on the sheet so annexed. But, in this case, some of the judges held that in case there was sufficient space on the deposition for the return to be written, it should be inserted there, and not attached on a separate paper.

In Minnesota, under their statute, the return must be indorsed

[1] Dunlap *v.* Waldo, 6 N. H. 450.

[2] 47 N. H. 235.

[3] Bown *v.* Bean, 1 D. Chip. 176. See Baker *v.* Rickhart, 52 Ind. 594.

The office of a county clerk is incompatible with the office of a notary, and on his acceptance and qualification as county clerk, the office of notary becomes *ipso facto* vacated; and a single act of the notary in taking a deposition, after his acceptance of the office of county clerk, will not make him a notary public *de facto*, but such deposition is void. Biencourt *v.* Parker, 27 Tex. 558. Where a commission issues to a notary public, if within the United States or Canada, it is sufficient to name the county of his residence; but if the deposition is to be taken in some foreign country, the city or town of his residence must be stated. Lyon *v.* Barrows, 13 Iowa, 428. Notaries cannot take depositions to be used in Courts in Tennessee. Carter *v.* Ewing, 1 Tenn. Ch. 212.

[4] Cook *v.* Bell, 18 Mich. 387.

[5] 20 N. Y. 134. See McCleary *v.* Edwards, 27 Barb. 239, holding that it cannot be objected to a deposition that the return to the commission was indorsed upon the interrogatories, which, with the deposition, were annexed and secured to the commission.

on the commission, and it is not sufficient if annexed to the deposition.[1]

In Savage *v.* Birckhead,[2] in Massachusetts, it was held, where depositions taken under a commission were returned, together with the commission and interrogatories, in an envelope, under the seal of the commissioner, but were not attached to the commission, and the commissioner's certificate of caption was also upon a separate paper in the same envelope, that they should be admitted in evidence.

A deposition taken out of the State by two commissioners, appointed by the Court, should be signed and sealed by both commissioners; the envelope should also be signed and sealed by both commissioners.[3] A commission issued to four commissioners jointly, to take the depositions of witnesses in England, was executed and returned by three of the commissioners only, two of whom, however, were of the defendant's nomination; and it was held they were not admissible in evidence.[4]

[1] Beatty *v.* Ambs, 11 Minn. 331.
[2] 20 Pick. 167.
[3] Waln *v.* Freedland, 2 Miles, Penn. 161.
[4] Guppy *v.* Brown, 4 Dall. 410.

# CHAPTER VII.

## DUTIES RELATIVE TO NEGOTIABLE PAPER.

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**§ 76. Importance of duties in this respect.**—The confidence placed in notaries public in regard to their duties in making presentment, demand, protest, and notice of protest of negotiable instruments, renders this part of their duty very important.[1] A failure to duly perform these duties may not only

[1] QUALITIES OF NEGOTIABLE PAPER.—1. *It must be open and unsealed.* If a seal be impressed and a recognition of the seal be made in the body of the paper, it is then a special contract, in the nature of a bond. Conine *v.* Junction etc. R. R. Co. 3 Houston, 289; Edwards on Bills, 208. In some States, sealed instruments for the payment of money are placed by statute on the same footing as bills and notes in respect to their negotiability. These States hold that the addition of a seal to a bill or note, payable to order or bearer, does not impair its negotiability. The places in which this is the rule are Colorado, Dakota, Florida, Georgia, Illinois, Kansas, Massachusetts, Nebraska, North Carolina, Ohio, Tennessee. Daniel on Neg. Instruments, Sec. 33. But, in general, the mere affixing a scroll or seal to the name of the drawer or maker, will not affect the negotiable character of the instrument. Anderson *v.* Bullock, 4 Munf. 442.

2. *The engagement to pay must be absolute.* There must not be a mere request of a favor, as in the case where a paper read, "Mr. L, please to let the bearer have £7, and place it to my account, and you will much oblige your humble servant": it was held not to be negotiable. Little *v.* Stackford, 1 Mood. & M. 371. And a mere acknowledgment of a debt due, without any express or implied promise to pay on its face, is not negotiable, as is held in England, in the case of an acknowledgment in the form of I O U. Fisher *v.* Leslie, 1 Esp. 425. But when

result in serious loss to those employing them, but may subject the notary to serious liability. Hence, it will be desirable to point out clearly the duties devolving on notaries in this respect, and the proper manner of performing the important functions intrusted to them. The duties of a notary in respect to negotiable paper may be divided into three divisions, viz: 1. Presentment for acceptance or payment; 2. Making protest; and 3. Giving notice of protest. There is another duty placed

accompanying the acknowledgment there is an obligation to pay interest, and to pay on demand, this is held to give the paper a negotiable character. Currier *v.* Lockwood, 40 Conn. 348; Sackett *v.* Spencer, 29 Barb. 180.

3. *The event of payment must be certain*, or the time must be fixed in some manner. Any condition fixed upon as determining the fact or the time of payment, takes from the paper the quality of negotiability. Thus, an engagement to pay "as soon as the crop can be sold, or the money raised from any other source," is not a promissory note. Nunez *v.* Dautel, 19 Wall. 592. And it will not be payable, if payment is to be only out of a particular fund. Edwards on Bills, 143. But if the event upon which payment depends must happen, it will not deprive the note of negotiability, as where it depends on one's death. Goode *v.* Colehan, 2 Stra. 1217; Bristol *v.* Warner, 19 Conn. 7. It will be negotiable if two events are named, one being certain to occur. Stevens *v.* Blunt, 7 Mass. 240.

4. *The bill or note must be payable in a certain amount of money.* It will not be negotiable if payable in merchandise, or any specific articles. Chitty on Bills, 132; Lawrence *v.* Dougherty, 5 Yerg. 453. And if payable in notes, bank-bills, or currency, it will be merely a special contract, and not negotiable paper. McCormick *v.* Trotter, 10 S. & R. 94; Irvine *v.* Lowry, 14 Peters, 293; Omohundro *v.* Crump, 18 Gratt. 703. An author says: "Money alone is legal tender, and only the note which represents money should be held negotiable. It should be expressed simply as payable in dollars, which have a definite signification, fixed by law." Daniel on Neg. Instruments, Sec. 56. In New York, where a note was given for a certain sum "payable in Canada currency," it was held not negotiable: Thompson *v.* Sloan, 23 Wend. 71; but in Michigan, it was held, a note payable "in Canada currency" is negotiable, it being construed to mean the lawful money in Canada, and this is the more approved doctrine. The amount must be fixed or ascertainable. So, if it be to pay money, "and all fines according to rule," it is not a negotiable note. Ayrey *v.* Fearnsides, 4 M. & W. 168. And if the instrument be to pay money, and also to "deliver up horses and a wharf," it is not negotiable. Martin *v.* Chauntry, 2 Stra. 1271.

5. *The payment must be made to a definite person, either to his order or bearer.* If made only to a person, without the words "bearer" or "order," it is merely a contract with that person alone, which would then be merely an assignable chose in action. Story on Bills, Secs. 119, 199. If payable "to bearer A," it is the same as if simply payable to A, and is, therefore, not negotiable. Warren *v.* Scott, 32 Iowa, 22. No precise form of words is necessary to impart negotiability. The words "order" and "bearer" are convenient and expressive, but they are not the only words which will communicate the quality of negotiability; but some equivalent words should be used. Raymond *v.* Middleton, 29 Penn. St. 530. If the name of the payee be not expressed, yet if there be sufficient to designate him, it will be sufficient on the maxim *Certum est quod certum reddi potest.* Adams *v.* King, 16 Ill. 169; Moody *v.* Threlkeld, 13 Ga. 55; Knight *v.* Jones, 21 Mich. 161.

upon them, though not in all States, to keep a record of their acts in respect to these several duties; but this has already been referred to in a former chapter.[1] We shall treat these duties in this chapter, and first of presentment.

## I. PRESENTMENT FOR ACCEPTANCE.

**§ 77. What should be presented for acceptance.**—A bill or order drawn by one person upon another, which is payable at a certain number of days after sight or demand, should be presented for acceptance to the drawee; and this must be done without unreasonable delay, or the drawer and indorsers will be discharged.[2]

Whether a bill payable at sight should be presented for acceptance is a question upon which there has been a difference of opinion. Because of this difference and uncertainty the matter is now determined by statute in nearly all of our States.[3] Whenever a bill payable at sight is allowed grace, then it is necessary to present it for acceptance in order to fix the time of payment. It has been the opinion in England that days of grace should be allowed.[4] Bills payable on demand, or at a certain number of days after date, or after a certain event, it is agreed are not entitled

[1] See Chap. III, Sec. 27.

[2] Allen *v.* Suydam, 20 Wend. 321; Aymar *v.* Beers, 7 Cow. 705; Robinson *v.* Ames, 20 Johns. 146; Story on Bills, Sec. 228.

[3] Perhaps nothing can better illustrate the uncertainty of our commercial law in the various States, than our statutory rules regarding bills payable at sight. From a careful examination of our statute law, it appears that in more than one-third of our States sight bills have no grace allowed. These States are: California, where no grace is allowed (Civil Code, Sec. 3181); Colorado (Rev. Stat. p. 88); Connecticut (Rev. Stat. of 1874, p. 344); Delaware (Rev. Code of 1873, p. 355); Georgia (Code of 1873, Sec. 2784); Illinois (Rev. Stat. of 1874, p. 720); Louisiana (Rev. Stat. of 1870, p. 70); Missouri (1 Wagner, 217); New York (2 Rev. Stat. 6th Ed. p. 1163); Ohio (1 Swan. & C. 862); Pennsylvania (Brightley's Purdon's Dig. p. 111); Rhode Island (Rev. Stat. p. 270); Tennessee (2 Taylor, p. 1965); Vermont (Rev. Stat. p. 508).

[4] Such is held by Chitty, (13th Am. Ed.) 426; Bayley on Bills, 151; Byles on Bills, (Sharswood's Ed.) 336; Edwards on Bills, 523. In Webb *v.* Fairmauer, 3 M. & W. Bolland, B., said: "In the case of a bill payable at sight, it has been decided over and over again that the holder cannot sue upon until after the expiration of the third day after sight." The same was the view expressed in Coleman *v.* Sayer, 1 Barn. 303; Dehers *v.* Harriott, 1 Show. 163. In Jansen *v.* Thomas, Lord Mansfield said: "I believe there is great doubt as to the usage about the three days' grace." It was denied that such bills are entitled to grace in Trask *v.* Martin, 1 E. D. Smith, 505.

to grace, and need not therefore be presented for acceptance.[1] However, it is the usual and safest way to present a bill payable a certain time after date, in order to obtain the greater security of the drawee's acceptance; and if acceptance be refused, the bill must then be protested in the same manner as if it were payable so many days after sight.[2] The necessity of a presentment for acceptance does not exist when the words "acceptance waived" are embodied in a bill.[3]

**§ 78. By and of whom presentment should be made.** —The holder, or his authorized agent—as a notary may be—has a right to present the bill for acceptance. The party who has possession of a bill is presumed to have the right to demand acceptance or payment.[4] When the bill is drawn upon persons who are not partners, it must be presented to all; for a holder is not bound to receive the acceptance of one or a portion.[5] When a bill is drawn on a firm, a presentment to and an acceptance by one partner will be sufficient.[6]

The person presenting a bill must be careful to ascertain whether application be made to the right party or his authorized agent for acceptance. Thus, in an action against the drawee on a failure to accept, it appeared that the witness had carried the bill to a place pointed out to him as the drawee's house, and there offered it to a person in a tan-yard, who refused acceptance; the witness did not know the drawee personally, and could not swear that it was he to whom he offered the bill, or that the person represented himself to be the drawee, and it was held that the evidence of presentment to the drawee was insufficient.[7]

A clerk found at the counting-room of the drawee is a proper

[1] Bank of Washington *v.* Triplett, 1 Pet. 25; Bachellor *v.* Priest, 12 Pick. 399; Bank of Bennington *v.* Raymond, 12 Vt. 401; Smith *v.* Roach, 7 B. Mon. 17; Walker *v.* Stetson, 19 Ohio St. 400.

[2] Story on Bills, Sec. 228; Glasgow *v.* Copeland, 8 Mo. 268; U. S. *v.* Barker, 4 Wash. C. C. 464; Allan *v.* Mawson, 4 Camp. 115.

[3] Webb *v.* Mears, 9 Wright, 222; English *v.* Wall, 12 Rob. La. 132; Liggett *v.* Weed, 7 Kan. 276.

[4] Bank of Utica *v.* Smith, 18 Johns. 230; Freeman *v.* Boynton, 7 Mass. 483.

[5] Story on Bills, Sec. 229, note 9; Harris *v.* Clark, 10 Ohio, 5.

[6] Story on Notes, 239; Holtz *v.* Boppe, 37 N. Y. 634.

[7] Cheek *v.* Roper, 5 Esp. 175.

party to whom to present a bill; and it is not necessary to show that such clerk was the duly authorized agent of the drawee.[1]

Good authorities hold that, in case of the drawee's death, a presentment should be made to his personal representatives, if they are accessible, and within a reasonable distance.[2] But against this view, Edwards on Bills says: "Upon principle, it is not easy to see upon what ground the holder is bound to present a bill drawn upon the deceased to his executor or administrator for acceptance. An acceptance by the representative, binding himself personally, is not according to the tenor of the bill; neither is an acceptance qualified so as to render him responsible to pay out of the assets that may come into his hands."[3] This argument is undoubtedly sound, and it would therefore follow that, in case of the drawee's death, the bill might be protested, and recourse had against the other parties.[4] If the drawee have absconded, it should be presented at his last domicile or place of business.[5]

**§ 79. The place where the presentment should be made** may be general or particular—particular, when a place is specified on the bill. It was a question once much debated whether, when a bill was drawn on a person at a specified place, the holder was bound to present it there only, and if not accepted there, to have it protested. Now, it seems reasonable that the object of indicating a place is to enable the holder more conveniently to find the drawee, and that if he be not there he should be sought for elsewhere. There may be many causes which would take one away from his place of business or residence, and it would seem a hard rule which would excuse an inquiry for him anywhere else. It was once decided, in the House of Lords, that a demand at the place specified must be made, and nowhere else;[6] but against this was the opinion of

[1] Nelson *v.* Fotterall, 7 Leigh, 180; Stainback *v.* Bank, 11 Gratt. 260.

[2] Chitty, (13th Am. Ed.) 318; Story on Bills, 236.

[3] P. 401.

[4] Daniel on Neg. Insts. Sec. 458.

[5] Groton *v.* Dalheim, 6 Greenlf. 476; Bayley on Bills, 218. If he only have removed, the holder must endeavor to find out to what place he has removed, and make the presentment there. Collins *v.* Butler, Stra. 1087. See the second part of the chapter on "Presentment for Payment."

[6] Rowe *v.* Young, 2 Bligh, 391.

eight of the twelve judges to whom the question was referred. The controversy was ended by statute adopting the view held by the judges contrary to the House of Lords.[1] The same view has been adopted in this country.[2] If the drawee has his dwelling house in one part of the town or city, and his place of business at another, it may be made at either place; and if the drawee resides in one town, and has his place of business at another, the holder may present the bill at either."[3] It has been held that if the drawee has moved out of the State of his former residence, either into a foreign country or into another State, a presentment to him is not necessary.[4]

**§ 80. The mode of presentment.**—"The term 'presentment' imports not a mere notice of the existence of a draft, which the party has in his possession, but the *exhibiting* of it to the person on whom it is drawn, that he may see the same, and examine his accounts or correspondence, and judge what he shall do; whether he shall accept the draft or not."[5] But even a refusal, without actually having the bill produced, will be good ground of protest.[6] But before acceptance, the drawee has a right to ask for the bill, and may decline accepting it, save in the usual mode of writing his name across it; but unless, as is usual, a statute requires the acceptance to be in writing, a person can give a parol acceptance, and he cannot afterward refuse to be held, on the ground that he did not see the bill.[7]

**§ 81. Time within which presentment made.**—It has been stated that an unreasonable delay to present a bill for acceptance will cause the indorsers and drawer to be discharged, for the reason that the drawee may have been abundantly able to meet the bill when drawn, or soon afterward, and by reason of the laches of the holder the drawer and indorsers were prevented from being active to secure themselves. But the great

[1] 1 and 2 Geo. IV, Chap. 78.
[2] 1 Parsons, N. & B. 305–11; Story on Bills, Secs. 355–357; Edwards on Bills, 426, 428.
[3] Story on Bills, Sec. 236.
[4] Magruder *v.* Bank of Washington, 9 Wheat. 598.
[5] Fall River Bank *v.* Willard, 5 Metc. 216.
[6] Fisher *v.* Beckwith, 19 Vt. 31; Carmichael *v.* Bank, 4 How Miss. 567.
[7] Fall River Bank *v.* Willard, 5 Metc. 216.

difficulty will be to ascertain what period of time will be considered unreasonable. It is very evident no precise rule can be made to ascertain it, as it must depend upon a variety of circumstances which it is impossible to foresee or calculate.[1]

On the whole, it is agreed, it must be a question for a jury, in consideration of all the circumstances, whether the delay was unreasonable or not.[2] But it may, when the facts are not disputed, be decided as a question of law.[3]

**§ 82. Excuses for delay in presentment.**—If the holder put a bill into circulation, there is not the same strictness in requiring a presentment for acceptance. Even a delay of a year, under these circumstances, was held not to be unreasonable.[4] But if the holder retain the bill in his possession, and thus keep it from circulation, he makes it his own, and will have no remedy against antecedent parties, from or through whom he derived title.[5] The difficulty of a communication with the drawee may be a proper excuse for a delay in presentment. In one case, a month's delay was held too much, when the distance between the residence of the drawer and the drawee was only eighteen miles, with communication three times a week between them.[6] Where a bill was drawn in London on Lisbon at thirty days, circulated through Paris and Genoa, and presented after a delay of three months and ten days, it was held there was no laches.[7] Where a sight draft on New York was indorsed to the plaintiff in Wisconsin, and was not mailed to New York for presentment until a period of fourteen days, it was held prima facie evidence of laches.[8]

The falling or rising of the rate of exchange may be considered to determine whether there was unreasonable delay in presentment. If the exchange were steady or rising, it is considered more unreasonable to wait, whereas if it were falling it might be presumed the holder would wait a longer time.[9] Any

[1] Wallace *v.* Agry, 4 Mason, 336.
[2] Fry *v.* Hill, 7 Taunt. 397; Nichols *v.* Blackmore, 27 Tex. 586.
[3] Bigelow, J., in Prescott Bank *v.* Caverly, 7 Gray, 217; 1 Parsons, N. & B. 340.
[4] Muilman *v.* D'Equino, 2 H. Bl. 565.
[5] Byles, (Shar. Ed.) 302; Gowan *v.* Jackson, 20 Johns. 176.
[6] Dumont *v.* Pope, 7 Blackf. 367.
[7] Goupy *v.* Harden, 7 Taunt. 397.
[8] Walsh *v.* Dart, 23 Wis. 334.
[9] Mellish *v.* Rawdon, 9 Bing. 416.

reasonable cause, such as sickness, inevitable accident, or a state of war or other uncontrollable event, will excuse delay in presentment for acceptance.[1]

**§ 83. As regards the time of day when presentment should be made,** it is held that it is proper to present a bill at any time during the hours of business; and the hours of business will depend, in a great many cases, upon the character of the drawee's occupation. For instance, the reasonable hours for a bank range from ten until three or four in the afternoon, or according to the hours when it is open for business; while, in the case of a tradesman, eight o'clock in the evening would not be too late to present a bill for acceptance.[2] And, no matter what the hour may be, if the drawee or his agent give a proper answer—either an acceptance or refusal—it will be sufficient.[3] But if application be at an unseasonable hour, and that reason be offered for refusing acceptance, such reason is valid.[4] And a known custom or usage, in a town or city where the presentment is to be made, will govern in determining the proper hour for presentation.[5]

Thus it is the custom in some cities, as for instance in San Francisco, for many large business houses and all the banks to close at one in the afternoon on Saturday, and this local custom must govern and be observed as regards the time for presentment.

**§ 84. Delay by agent more strictly regarded.**—An agent is held to a stricter accountability for delay in the presentment of a bill for acceptance. The leading case on this subject may

[1] Aymar *v.* Beers, 7 Cow. 705; U. S. *v.* Barker, 1 Paine C. C. 156; Hilton *v.* Shepherd, 6 East, 16.

The codes of foreign countries specify the time within which bills drawn payable after sight must be presented for acceptance. The French Code gives six months, one year, and even two years, according to distance. The same provisions are made by the Italian, Dutch, Portuguese, and Spanish Codes.

By the Civil Code of California, Sec. 3134, a definite rule is given. It is there provided: "The apparent maturity of a bill of exchange payable at sight or on demand is: 1. If it bears interest, one year after its date; or, 2. If it does not bear interest, ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance."

[2] Chitty on Bills, 313; Bailey *v.* Bailey, 2 Campb. 517.

[3] Parker *v.* Gordon, 7 East, 385; Id. 316.

[4] Story on Bills, Sec. 236.

[5] Story on Notes, Sec. 135.

be considered to be Allen *v.* Suydam,[1] where it was held, after thorough argument and examination, that an agent who received a bill, payable after date, for collection, and which had not been accepted, was bound to present it without unreasonable delay, and having delayed for seventeen days to do so, he was liable to his principal for all damages he might have sustained by his delay. This case is not approved by Professor Parsons, who argues that the agent ought not to be held to any stricter rule in this respect than his principal.[2] But this view, as held in the New York case, is generally accepted. In Scotland, an agent was held liable for having neglected to present a bill for acceptance for four days, when the drawee refused to accept.[3] In another case, a bill, payable at Glasgow three days after date, was sent to agents in that city for collection. Before the day of payment the drawer failed, and the Glasgow bank refused to accept. It was not clear whether the bank would have accepted the draft if it had been immediately presented, for the bank had no funds of the drawer, and the practice had been to make provision for such drafts at the day of payment. In an action against the agents, the Court held "that, *as agents*, they were bound to present the bill for acceptance immediately."[4]

**§ 85. Acceptance, how given.**—By the common law, an acceptance might be made by parol. It is the act of signifying one's assent, which may be done by word or by writing; but since it is so difficult to prove or show an acceptance when it is orally given, commercial usage all over the world now requires an acceptance to be in writing; and this is also required by statute in England, and in most of the United States.

The acceptance is usually given by writing the word "accepted" across the face of the bill, and adding the acceptor's signature. In a case where the drawee wrote his name alone, it was held inadmissible for him to show that he refused to write "accepted," for the name alone imported it.[5] Sometimes the acceptor, as a matter of precaution, repeats in figures the amount of the bill. And it has been held that where the stat-

[1] 20 Wend. 321.
[2] 1 Parsons N. & B. 346-7.
[3] Brooke, Office and Practice of a Notary, p. 55.
[4] Bank of Scotland *v.* Hamilton, 1 Bell. Com. 409.
[5] Kauffman *v.* Barrenger, 20 La. An. 419. So in Spear *v.* Pratt, 2 Hill, 582.

ute law requires that acceptance shall be in writing on the bill, and signed by the party to be charged thereby, or his agent, such a requirement is satisfied by the acceptor writing his name across the face of the bill.[1] It is usual for the acceptance to be written *across* the bill, but it may be written in any other place. Thus a writer says: "The position of the drawee's subscription seems immaterial, provided it be there, for it may be written above as well as below that of the drawer; and as it has been held that an indorsement may be written on the face of the bill, an acceptance may, as is sometimes the case, be indorsed."[2]

But the writing must be *on the bill.* Thus, under the New York statute, it has been held that where A drew a bill on B, in New York, and procured it to be discounted at a bank, and B afterward wrote a letter to A, accepting the bill, and A exhibited the letter to the officers of the bank, that the bank could not maintain an action against B, on his acceptance, under the New York statute.[3]

The acceptance must be by the person to whom the bill is addressed, otherwise it is a nullity, except in case of an acceptance for honor.[4] Thus, when a bill was addressed by John Hart to "Mr. John Hart," payable to me or order, and there was written across its face, "Accepted, H. J. Clarke," it was held that Clarke could not be sued as an acceptor, Coleridge, J., saying: "Acceptance can only be made by the party addressed, or for his honor. Here, the last is not pretended, and the first cannot be presumed."[5]

When an acceptance is made by an agent, the holder has a right to inquire into the agent's authority for this purpose, and may refuse to take the acceptance when that authority is not definite, and treat the bill as dishonored.[6]

[1] Bassett *v.* Haines, 9 Cal. 261.
[2] Thomson on Bills, 220.
[3] Worcester Bank *v.* Wells, 8 Met. 107.
[4] Walker *v.* Bank, 9 N. Y. 582.
[5] Davis *v.* Clarke, 6 Ad. & El. N. S. 16.
[6] Coore *v.* Callaway, 1 Esp. 115; Byles, 113.
When an acceptance is made by an agent, it should be in the name of his principal. Bayley on Bills, 52. An acceptance by a partner, in his individual name, of a draft drawn on firm, will bind firm. Parnell *v.* Phillips, 55 Ga. 618.

**§ 86. Statutory provisions regarding mode of acceptance.**—By the common law, a parol acceptance would be valid; and so it will now be, except in those States where it is otherwise provided. In a late decision in the Supreme Court of the United States,[1] it is held that, unless forbidden by statute, it is a rule of law, generally, that a promise to accept an existing bill of exchange is an acceptance thereof, whether the promise be in writing or by parol. But many of our States have expressly provided by statute that an acceptance of a bill or draft must be in writing. Thus, in Alabama the acceptance is required to be in writing on the bill; but a written promise to accept is good.[2] So in Arkansas; and if the writing be on any other paper it will not bind the acceptor, except where one on the faith thereof receives the bill.[3] Such is substantially the law of California[4] and Kansas.[5] In Michigan, the statute provides that "no person within this State shall be charged as an acceptor on a bill of exchange, unless his acceptance shall be in writing, signed by himself or his lawful agent."[6] There is a similar provision in the statutes of Minnesota and Missouri.[7] And in the latter State it has been decided that the drawee of a bill is not liable upon his verbal acceptance, or promise to pay the bill.[8] The acceptance must be in writing in New York, Nevada, Oregon, and Wisconsin.[9]

**§ 87. Time given to drawee for acceptance.**—The commercial law generally permits a drawee a certain period of time to consider before giving his acceptance; for it is assumed the drawee should examine the state of his accounts before giving an acceptance. Twenty-four hours is the usual period allowed

[1] Scudder *v.* Union Nat. Bank, 1 Otto, 406. In this case it was shown that in Illinois a parol promise to accept a bill of exchange was valid, there being no statute in that State requiring the acceptance to be in writing.

[2] Code, Secs. 1840-1.

[3] Gantt's Dig. Sec. 549.

[4] Civil Code, Secs. 3193, 3196.

[5] Gen Stat. p. 45.

[6] 1 Comp. Laws, p. 516.

[7] 1 Bissell, p. 714; 1 Wagner, p. 214.

[8] Rousch *v.* Duff, 35 Mo. 312.

[9] 2 Rev. Stat. New York, 6th Ed. 1160; Compiled Laws of Nevada, Sec. 14; Gen. Laws, Oregon, p. 718; 1 Taylor's Stat. Wisconsin, 835.

for this purpose.[1] But if the drawee refuses to accept within the twenty-four hours, the holder has a right to protest immediately.[2]

This is now regulated by statute, to a great extent, and in a note will be found the statutory provisions on this subject.[3]

**§ 88. A partial or conditional acceptance.**—A holder may at his discretion accept a partial or a conditional acceptance; but in such a case he is bound to notify the previous parties. He is not bound to take any acceptance different from the tenor of the bill, and if not so accepted, he has the right to protest it.[4] But it is seldom a holder is willing to take an acceptance of this character, and the general course will be to protest a bill if not accepted exactly as to the tenor in which drawn.

An acceptance which is conditional is one such as to pay "when in funds," to pay "when goods consigned to me are sold," and the like. In case of a suit on this kind of accept-

[1] Ingram *v.* Foster, 2 Smith, 243; Bellasis *v.* Hester, 1 Ld. Raym. 281; Connelly *v.* McKean, 64 Penn. St. 113; Case *v.* Burt, 15 Mich. 82; Overman *v.* Bank, 3 Vroom, 563.

[2] Chitty on Bills, 279.

[3] The French law allows the drawee twenty-four hours for consideration (Code of Com. Sec. 125). The German law authorizes the holder to ask immediate acceptance (German Law, 18). The following States by statute allow a drawee twenty-four hours to decide:

ALABAMA.—(Rev. Code, Sec. 1844.) If kept for twenty-four hours, the bill is considered accepted.

ARKANSAS.—(Gantt's Dig. Sec. 554.) The same provision.

CALIFORNIA.—If the drawee requests it, the bill must be left with him until the same hour of the next day, to which time he may postpone his acceptance or refusal (Civil Code, Sec. 3186).

KANSAS.—(Rev. Stat. p. 115.) Must give an answer to the demand within twenty-four hours, otherwise the bill is deemed accepted.

MASSACHUSETTS.—(Act of April 4th, 1860.) Any person upon whom a bill of exchange or draft is drawn, which requires acceptance, shall have until two o'clock in the afternoon of the business day next succeeding the first presentation thereof in which to decide whether or not he will accept the same: *provided*, however, that all bills of exchange or drafts, which may be for cause held over one day, shall when accepted date from the day of presentation.

MISSOURI.—(1 Wagner, 215.) Twenty-four hours allowed.

NEW YORK.—Every person upon whom a bill of exchange is drawn, and to whom the same is delivered for acceptance, who shall destroy such bill, or refuse within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, shall be deemed to have accepted the same. 2 Rev. Stat. 6th Ed. 1161.

[4] Chitty on Bills, 301; Edwards on Bills, 430.

ance, the burden will be on the plaintiff to show a performance of the condition before he can recover against the acceptor.[1]

By receiving a qualified acceptance, all antecedent parties are discharged, unless the holder has obtained their consent.[2] So the holder may take a partial acceptance, but he will discharge the drawer and indorsers unless he protests as to the residue, for the acceptance is only good as to the part for which accepted.[3]

Whenever an acceptance is conditional, the conditions must appear on the face of the paper; otherwise, parties into whose hands the paper may come, without notice, will not be bound by the conditions.[4]

**§ 89. Acceptance supra protest.**—It sometimes happens that a party, for the honor of some one whose name is on a bill, comes forward and gives an acceptance *supra protest* for honor. But first, it is necessary to protest the bill on the failure of the party to whom addressed, or to another *au besoin* to accept.[5] This kind of acceptance is given in this manner: the acceptor *supra protest* appears before a notary public, witnesses and declares that he accepts such protested bill in honor of the drawer or indorser, and will pay it at the appointed time.[6] He then subscribes his name to the words, "Accepted, *supra protest*, for the honor of A B."

When an acceptance of this character is made, the party making it should at once notify the party in whose favor he has made the acceptance.[7]

The drawee may be an acceptor *supra protest*, and may refuse acceptance on account of the party requesting. He will then accept for the honor of some indorser on the bill.[8] There may be several acceptors *supra protest*; one may accept for the

[1] Nagle *v.* Horner, 8 Cal. 358; Liggett *v.* Weed, 7 Kan. 273; Gammon *v* Schmoll, 5 Taunt. 344.

[2] Byles on Bills, 186; Story on Bills, Sec. 204.

[3] Weggersloffe *v.* Kerne, 1 Stra. 214; Thomson on Bills, 226.

[4] U. S. *v.* Bank of Metropolis, 15 Pet. 377; Story on Bills, Sec. 240.

[5] Story on Bills, Sec. 256; Hoare *v.* Cazenove, 16 East, 391; Williams *v.* Germaine, 7 B. & C. 468.

[6] Daniel on Neg. Instruments, 387; Gazzam *v.* Armstrong, 3 Dana, 554.

[7] Story on Bills, Sec. 259.

[8] Id.

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drawer, another for one or more of the indorsers.[1] If the acceptor omits to state for whose honor the acceptance is made, it will be construed to be for the honor of the drawer.[2]

If the acceptance be for the honor of the drawer, the acceptor will be liable to all the indorsees, as well as to the holder; if in honor of a particular indorser, then to all subsequent indorsees.[3]

### II. PRESENTMENT FOR PAYMENT.

**§ 90. By whom demand of payment made.**—What was said in regard to presentment for acceptance, in the first part of this chapter, is equally applicable to presentment for payment, and without going over the same ground, we shall here make reference to the section wherein this subject was treated.[4] In case of the death of the holder of a bill or note, the demand of payment should be made by his personal representatives. And if a person has become bankrupt, and his property is in the hands of an assignee, he is the person to make demand for payment.

The possession of a bill or note, payable to bearer, or indorsed in blank, is prima facie evidence of the right of the holder to demand payment; and payment to such person will be a valid payment, unless it is known that he has acquired possession wrongfully. When an instrument is specially indorsed for collection to an agent, it is fair to presume the party presenting it is authorized to demand payment. Even when placed in the holder's hands *as agent*, and not indorsed by the payee, a payment to the holder under such circumstances would be valid, but if negotiated it must be indorsed.[5] But, supposing the instrument be not indorsed by the payee, or be indorsed by him specially to another, and the holder to have possession without an indorsement to him, has the maker or acceptor a right to make payment to the person presenting the bill or note, if he has no proof of the agency of the holder? and will a payment under these circumstances be a valid payment? Chitty seems to in-

[1] Chitty on Bills, 376.
[2] 1 Parsons N. & B. 313.
[3] Chitty on Bills, 352.
[4] See Sec. 77.
[5] Doubleday *v.* Kress, 60 Barb. 196.

timate that such a payment would be valid;[1] and in a very early case it is said: "If a wrong person do show the bill, by the custom of merchants this is a good payment."[2] But it is now settled that payment under these circumstances is not valid.[3]

**§ 91. Demand by notary or clerk.**—Before a protest can be made for non-payment, a notary must demand payment of the bill or note. But the question very frequently arises whether a protest founded on a demand made by a notary's clerk or deputy is good. By the English practice, the clerks of notaries demand payment, and protest can be founded on such demand.[4] But, even there, the right of a notary's clerk to make presentment has been very much questioned.[5] But in the United States it is generally held that, at common law, the notary *himself* must make the demand of a foreign bill. In some States, there is a usage permitting a demand to be made by a clerk, and that will there prevail, while in others, as in Louisiana, a notary's deputy is authorized by statute to make a demand.[6]

In New York, it has been lately held, in two well-considered cases, that it is improper to found a protest on a demand made by a notary's clerk, unless there is a well-understood usage authorizing it.[7]

[1] Chitty on Bills, 365.

[2] Anon. Styles, 366.

[3] Thompson on Bills, 246; Daniel on Neg. Instruments, 427; Doubleday *v.* Kress, 50 N. Y. 410.

[4] Rodgers *v.* Stevens, 2 T. R. 713; Orr *v.* Maginnis, 7 East, 358; Gale *v.* Walsh, 5 T. R. 239. Brooke says: "If a foreign bill should not be paid at maturity, then, by the law merchant, it is necessary to have it protested by a notary for non-payment; and it is presented either by a notary or by his clerk, (most commonly by his clerk) and it is then noted, and a protest is prepared, signed by the notary and passed under his official seal." Office and Duty of a Notary, p. 128.

[5] In Leftly *v.* Mills, 4 T. R. 170, Buller, J., in a dictum, doubted the right of a notary's clerk to make a proper demand; and in Vandewall *v.* Tyrrell, 1 Mood. & M. 87, (22 E. C. L.) Buller's dictum was approved; and followed in New York, in Onondaga Co. Bank *v.* Bates, 3 Hill, 57.

[6] Fassin *v.* Hubbard, 55 N. Y. 465; Carter *v.* Brown, 7 Humph. 548.

[7] Commercial Bank *v.* Varnum, 49 N. Y. 275; Gawtry *v.* Doane, 51 N. Y. 85; So in Missouri: Commercial Bank *v.* Barksdale, 36 Mo. 563. In Alabama: Donegan *v.* Wood, 49 Ala. 242. In Kentucky: Chenowith *v.* Chamberlain. 6 B. Mon. 60. In Mississippi: Ellis *v.* Com. Bank, 7 How. 294.

In Ocean National Bank *v.* Williams,[1] it is held that a usage for notaries to present by deputy a foreign bill of exchange for payment, is not proved by evidence of the general practice in case of "bills," unless it distinctly appears that the practice includes foreign bills. In case of inland bills and promissory notes, the law merchant does not require them to be protested; but by statute, in almost all our States, this may be done, and whenever protested they must, as in the case of foreign bills, be demanded by the notary in person before he can make a proper protest.[2] A son of the holder of paper, if he be a notary, may act as the agent of his father in his notarial as well as in any other lawful capacity.[3]

**§ 92. To whom presentment for payment should be made.**—In the usual course, a demand for payment is made on the drawee or acceptor of a bill, or the maker of a note, or an authorized agent of either, and this demand may be made at the usual abode or place of business of the person, not necessarily from himself, but it may be from any one found there—his wife, clerk, agent, or servant.[4]

There is more indulgence given to a drawee in waiting for his acceptance than to a person from whom payment can be demanded. In the first instance, a drawee may not be aware of the existence of the bill, and a holder therefore is bound to wait a reasonable time, and use reasonable diligence in finding him; but in the case of one who has accepted, and made thereby a positive engagement to pay, no such indulgence is called for or granted. He is expected to be fully aware of the nature and period of his obligation, and to provide funds at the time and place agreed upon; and whenever an application is made by a holder at the proper time and at the designated place, he should expect the engagement to be promptly met, or otherwise he may at once protest.[5]

[1] 102 Mass. 141.

[2] Sheldon *v.* Benham, 4 Hill, 129.

[3] Eason *v.* Isbell, 42 Ala. 456.

[4] Matthews *v.* Haydon, 2 Esp. 509; Stainback *v.* Bank of Virginia, 11 Gratt. 260; Nelson *v.* Fotterall, 7 Leigh, 180; Draper *v.* Clemons, 4 Mo. 52; Stewart *v.* Eden, 2 Caines, 121.

[5] See, on this point, Story on Bills, Sec. 350; Daniel on Negotiable Instruments, Sec. 440.

**§ 93. In case the acceptor or maker be dead,** it will be necessary to present for payment to the representatives of the deceased.[1] But if the bill or note be payable at a particular place it is sufficient to present it there, and if not paid it may be protested.[2]

**§ 94. In case of partners,** a demand from one is sufficient, and if payable generally, a demand from one of the partners, wherever found, is sufficient.[3]

If the firm be dissolved from any cause, either through a voluntary dissolution or in case of bankruptcy, a demand from any one of the partners is sufficient, for the liability continues until all demands are duly satisfied or discharged.[4]

In the event of the death of a partner, a demand should be made from the surviving partner or partners, and not from the personal representatives of the deceased, because all liabilities of the firm fall on the surviving partners in the first instance.[5]

If, however, the note were made by joint makers, who are not partners, a demand must be made on each, according to what was stated in a former section on presentment for acceptance.[6]

In the event of the death of a joint maker, presentment should be made to the survivor, upon whom, according to law, the obligation devolves. If the note were several as well as joint, the demand may be made, as the holder shall choose, upon the survivor, or upon the representatives of the deceased.[7]

**§ 95. When the acceptor or maker cannot be found,** and is supposed to have absconded, application should be made at his last place of residence, and inquiries made for him. If

[1] Gower *v.* Moore, 25 Me. 16; Magruder *v.* Bank, 3 Pet. 87; Juniata Bank *v.* Hale, 16 Serg. & R. 167. If there be no personal representatives, and the note or bill be payable generally, then it must be presented at the last dwelling-house of the deceased. Story on Notes, Sec. 253.

[2] Philpot *v.* Bryant, 1 Moore & P. 754; 3 C. & P. 244; Holtz *v.* Boppe, 37 N. Y. 634; Boyd's Admr. *v.* Bank, 15 Gratt. 502.

[3] Branch of State Bank *v.* McLeran, 26 Iowa, 306; Shed *v.* Brett, 1 Pick. 401.

[4] Crowley *v.* Barry, 4 Gill, 194; Fourth Nat. Bank *v.* Heuschuk, 52 Mo. 207; Hubbard *v.* Matthews, 54 N Y. 50; Brown *v.* Turner, 15 Ala. 632.

[5] Cayuga Bank *v.* Hunt, 2 Hill, 635; Story on Bills, Secs. 346–362.

[6] Gates *v.* Beecher, 60 N. Y. 522; Willis *v.* Green, 5 Hill, 232; Union Bank *v.* Willis, 8 Met. 504; Arnold *v.* Dresser, 8 Allen, 435

[7] Story on Notes, Sec. 256.

the instrument be payable at a certain place, it is only necessary to go there, and if closed, or no one there to answer, nothing more may be done, but protest.[1] If a notary, on presenting a bill or note for payment, find the place of business or residence of the acceptor or maker closed, and no person there to give an answer, it is customary and proper to state the fact in the protest; and sometimes, in case of the bankruptcy or insolvency of a party, that fact may also be properly stated, though a notary's certificate would not be evidence as to such facts; but it may tend to account for non-payment.[2]

**§ 96. Time of making presentment for payment.**—In ordinary cases, the time is fixed by the note or bill, and where grace is allowed, as it is in almost all our States, it is easy to determine the time.

The uncertainty arises when a bill or note is payable at sight or demand. It was shown, in a former section, that on bills payable on demand no grace is allowed; and on those payable at sight, grace is not allowed in more than one-third of our States.[3] But when a note or bill bears interest, and is payable on demand, it is evident that there must be some reasonable time within which it should be presented for payment; and what this reasonable time may be, cannot be determined according to any uniform rule. The authorities disagree very seriously as to this reasonable time. Eight months' delay was held to discharge an indorser in one instance, seven months in another, five and a half in another, all the parties residing in the same place;[4] and, on the other hand, a delay of twenty-one months to present a note payable on demand, with interest, has been held not to discharge the indorser.[5] The cases, however, hold that what this reasonable time shall be, in a given instance, must be a question of fact for a jury to determine, under proper instructions from the Court.[6] But it is also held on good authority

[1] Buxton *v.* Jones, 1 Mann. & G. 86; Barclay *v.* Bayley, 2 Campb. 527.

[2] See, on this point, Sec. 140 in chapter on "Notarial Acts as Evidence."

[3] See Sec. 77.

[4] Field *v.* Nickerson, 13 Mass. 131; Martin *v.* Winslow, 2 Mason, 241; Sice *v.* Cunningham, 1 Cow. 397. Two years was held too long. Loomis *v.* Pulver, 9 Johns. 244.

[5] Vreeland *v.* Hyde, 2 Hall, 429. See Daniel on Neg. Instruments, Sec. 609.

[6] Hankey *v.* Trotman, 1 W. Bl. 1; Field *v.* Nickerson. 13 Mass. 131; Straker *v.* Graham. 4 M. & W. 721.

that, when the admitted facts are few and simple, it is a question of law for the Court.[1] Some of our States have, by statute, determined the time when such notes should be presented for payment.[2]

**§ 97. As to the time of day for demand of payment.**— When the note or bill is payable at a bank, or at a place of business having known and established hours for the transaction of business, it should be presented for payment during such hours.[3] But if application be made after business hours, and any one be found on the premises, having authority to answer, who refuses payment, a protest can be made on such refusal.[4] A late case in New York is remarkable in this respect. On the day when the note was due, the holder got into the bank after business hours, (5 P. M.) and found an officer, who answered that there was no money then to pay the note; but it appeared that during the day the indorser had been to the bank inquiring for the note,

[1] Himmelman *v.* Hotaling, 40 Cal. 111; Gray *v.* Bell, 2 Rich, 67; Dennett *v.* Wyman, 13 Vt. 485; Darbishire *v.* Parker, 6 East, 3. In this connection, the opinion of Byles is well worth attention. He says: "A common promissory note payable on demand differs from a bill payable on demand, or a check, in this respect: the bill and check are evidently intended to be presented and paid immediately, and the drawer may have good reasons for desiring to withdraw his funds from the control of the drawee without delay; but a common promissory note, payable on demand, is very often originally intended as a continuing security, and afterward indorsed as such. Indeed, it is not uncommon for the payee, and afterward the indorsee, to receive from the maker interest periodically for many years on such a note, and sometimes the note is expressly made payable with interest, that though the holder may demand payment immediately, yet he is not bound to do so. It is therefore conceived that a common promissory note payable on demand, especially if made payable with interest, is not necessarily to be presented the next day after it has been received, in order to charge the indorser; and when the indorser defends himself on the ground of delay in presenting the note, it will be a question for the jury whether, under all the circumstances, the delay of presentment was or was not unreasonable." Bills, (Sharswood's Ed.) 338.

[2] Thus, in California: "If a promissory note, payable on demand, or at sight, without interest, is not duly presented for payment within six months from its date, the indorsers thereof are exonerated, unless such presentment is excused." Civil Code, Sec. 3248. In Connecticut, (Gen. Stat. 1875, p. 343) a note payable on demand must be presented within four months, or it shall be considered overdue and dishonored.

[3] Parker *v.* Gordon, 7 East, 385; Thomson on Bills, 302; Story on Bills, Secs 236, 349.

[4] Bank of Syracuse *v.* Hollister, 17 N. Y. 46; Bank of Utica *v.* Smith, 18 Johns 230; First Nat. Bank *v.* Owen, 23 Iowa, 185; Flint *v.* Rodgers, 15 Me. 67; Garnett *v.* Woodcock, 1 Starkie, 475; 6 M. & Sel. 44.

and ready to pay it. It was held that due demand had been made.[1]

When the person who is bound to pay has not obliged himself to pay at any bank or business place, having regular and established hours of business, a demand may be made of him at his residence, or wherever found, at any reasonable hour of the day. It would, however, be improper to present it after he has retired in the evening. Thus, in Wilkins *v.* Jadis,[2] the evidence was that, between seven and eight o'clock in the evening, a notary's clerk went to the house, rang the bell, and knocked, but no answer was given, and it was held that this was a good presentment. Lord Tenterden (a good authority on commercial law) said in this case: "As to bankers, it is established, with reference to a well-known rule of trade, that a presentment out of the hours of business is not sufficient; but in other cases the rule of law is, that the bill must be presented at a reasonable hour; a presentment at twelve o'clock at night, when a person has retired to rest, would be unreasonable, but I cannot say that a presentment between seven and eight in the evening is not a presentment at a reasonable time."[3]

In Farnsworth *v.* Allen,[4] a presentment was made at 9 P. M., at the maker's residence, ten miles from Boston. He and his family had retired, and it was sufficient. In another case, a presentment at 8 A. M., at the maker's storehouse, was held insufficient.[5] A presentment at 8 P. M., in some cases, has been held sufficient.[6]

It is a general rule of law that when a person enters into a contract he has all the day to perform it on which he obliged himself to pay or discharge it. Then it may be asked, why cannot an acceptor or maker have the whole day within which

[1] Salt Springs Nat. Bank of Syracuse *v.* Burton, 58 N. Y. 430.

[2] 2 Barn. & Ad. 188.

[3] In Strong *v.* King, 35 Ill. 9, it was held that, after a bill has been presented by the holder or his agent for payment, it may again be presented by a notary for the purpose of making a protest for non-payment, after business hours on the same day. Where a notary agrees to present a bill a second time, a protest without such second presentation is unauthorized. Case *v.* Burt, 15 Mich. 82

[4] 4 Gray, 453.

[5] Lunt *v.* Adams, 17 Me. 230.

[6] Triggs *v.* Neunham, 1 Car. & P. 631; Barclay *v.* Bailey, 2 Camp. 427. A presentation a few minutes before twelve at night would be unavailing. Dana *v* Sawyer, 22 Me. 244.

to make payment? There cannot be any doubt that a tender up to the last minute of the day ought to be good, so as to save the party from any damages by protest. Lord Kenyon, in Leftley *v.* Mills,[1] thought that the acceptor had until the last moment of the last day of grace to pay the bill. So did Parke, J., in Startup *v.* McDonald.[2] And in Hartley's Case,[3] Abbott, C. J., said: "I think the notice of dishonor given on the day on which the bill is payable will be good or bad as the acceptor may or may not afterward pay the bill. If he does not afterward pay it, the notice is good; and if he does, it, of course, comes to nothing."

**§ 98. Computation of time.**—In construing contracts and statutes under the common law, a month is deemed a *lunar* month;[4] but in the law merchant a month is construed as a calendar month whenever it has reference to negotiable instruments or mercantile contracts.[5] Thus, on a bill or note payable one month after date, and dated the 1st of January, the month will not expire until the first of February, and the bill or note will not become due (allowing three days of grace) until the fourth; and, according to this rule, if a bill be dated on the 29th, 30th, or 31st of January, payable one month after date, the time will expire on the last day of February, whether it be leap year or not, and the days of grace are to be calculated from thence,[6] which would make it due on the 3d of March.

A bill made on the last day of a month is payable on the corresponding day of the next month, if a month after date, and not on the last day of the succeeding month. Thus, a note made on the 30th of September, the last day of the month, is due, if without grace, on the 30th of October, and not on the last day of October.

When a bill is payable at a certain number of days after sight, and is accepted, the days are calculated from and exclusive of the day of acceptance. And if it be presented on one

[1] 4 T. R. 170.
[2] 6 M. & G. 602.
[3] 1 C. & P. 556.
[4] Chitty on Bills, 373.
[5] Bayley on Bills, 249; Thomas *v.* Shoemaker, 6 Watts & S. 179; McMurchey *v* Robinson, 10 Ohio, 496; Lang *v.* Gale, 1 M. & S. 111.
[6] 1 Parsons N. & B. 409; Wagner *v.* Kenner. 2 Rob. La. 120.

day and accepted on another, the day of acceptance is excluded.[1] The expressions payable "in thirty days," "in thirty days from date," "at thirty days," and "thirty days after date," are synonymous.[2]

**§ 99. Rule regarding Sundays and holidays.**—In estimating the maturity of notes and bills there is a peculiarity about the calculation of grace arising from the fact that grace is a mere indulgence. Thus, when a bill or note, without grace, falls due on a Sunday or holiday, it is not payable until the following business day.[3] But when the time expires, including the days of grace, on a Sunday or other non-business day, the bill or note falls due on the day preceding, because, as grace is an indulgence, the debtor cannot require the creditor to extend his indulgence beyond three calendar days. The latest business day within or before the period of grace is the day of payment, even though all grace be excluded.[4] If a holiday or Sunday intervenes, or is the nominal day of grace, it is counted as one of the days of grace.[5]

**§ 100. The place of presentment for payment.**—Provided there be no specified place on the instrument where payment is to be made, a demand for payment should be made upon the maker or acceptor at his domicile, place of business, or wherever found.[6] But when an instrument is payable at a certain place, presentment there only is necessary, and if not paid, or no one be found to answer, protest may be made, without fur-

[1] Mitchell *v.* De Grand, 1 Mason, 176.

In computing time from the day of the date or from a certain act or event, the day of the date is to be excluded unless a different intent is manifested by the instrument or statute under which the question arises. Bemis *v.* Leonard, 118 Mass. 502.

[2] Ammidown *v.* Woodman, 31 Me. 580.

[3] Avery *v.* Stewart, 2 Conn. 69; Satler *v.* Burt, 20 Wend. 205; Barrett *v.* Allen, 10 Ohio, 426.

[4] Story on Bills, Sec. 338; 1 Parsons N. & B. 402. By Sec. 3132, Civil Code of California, it is provided, when a note or bill becomes due on a holiday, it is payable on the next business day; but in this State there are no days of grace allowed.

[5] Woolley *v.* Clements, 11 Ala. 229.

[6] A demand by the holder of a note, payable generally, may be made upon the maker in the street, he having no place of business and raising no objection to the place where the demand is made. King *v.* Crowell, 61 Me. 244.

ther inquiry.[1] But when no place is designated, a party is required to use diligence in looking up the maker or acceptor; and if he has removed from his last place of residence or business, inquiries should be made as to his new residence. The presumption is, that the place where a demand for payment should be made is the place where the maker lived when the note was made; however, if he remove from the State and take up a permanent residence elsewhere, it is sufficient to present the note for payment at the maker's last place.[2] Notwithstanding this presumption, evidence is admissible to show a parol agreement to pay at another place, at the time the note was made.[3]

When the maker or acceptor has a well-known place of business, it is the proper place to make a demand of payment. It would be very unreasonable to have a bill presented at a person's private residence under these circumstances, and to do so would show a want of diligence that would not justify a protest.[4] But if a person's place of business cannot be found, then a demand should be made at his residence.[5]

A presentment, when the party has no place of business, should be made at his dwelling.[6] And so, if a partnership place of business is closed when the note matures, and one of the partners reside in the town or city, a demand at his residence should be made.[7]

A note drawn, payable "at any bank in Boston," should be presented for payment at an incorporated bank.[8] A promissory note made payable at a bank in a city may be presented at any incorporated bank there; it is the duty of the party bound to pay to have funds ready at any bank in such a case.[9]

[1] By Sec. 3130 of the Civil Code of California, it is provided that "if the instrument is, by its terms, payable at a specified place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to an offer of payment upon his part."

[2] Herrick v. Baldwin, 17 Minn. 209.

[3] 1 Parsons, N. & B. 424; Meyer v. Hibsher, 47 N. Y. 265; State Bank v. Hurd, 12 Mass. 171; Thompson v. Ketcham, 4 Johns. 285.

[4] 1 Parsons, N. & B.

[5] Jarvis v. Garnett, 39 Mo. 271.

[6] Packard v. Lyon, 5 Duer, 82.

[7] Granite Bank v. Ayres, 16 Pick. 392.

[8] Way v. Butterworth, 106 Mass. 509.

[9] Malden Bank v. Baldwin, 13 Gray, 154.

**§ 101. Mode of demanding payment.**—It is necessary, when a demand is made, to make an actual exhibition of the instrument.[1] So, where a demand was made, and the party did not produce the bill, or had it not with him, it was insufficient.[2] But when a demand is made, and no actual exhibition of the paper is required, and a refusal be given based on other grounds, the exhibition of the paper will be considered waived.[3] And when the maker, at the day of maturity, calls upon the holder and informs him of his inability to pay, requesting him at the same time to notify the indorsers, an exhibition would be useless.[4] It was held, in an early New Hampshire case, that where the note was in a bank a short distance from the maker's house, and the cashier informed the maker that it was there, and requested payment, it was a sufficient demand.[5]

**§ 102. When the paper is payable at a bank,** and is there ready to be taken up by the party who is bound to pay, if it is not paid during business hours, it may be considered as

[1] Musson *v.* Lake, 4 How. 262.

[2] Draper *v.* Clemens, 7 Mo. 52; Freeman *v.* Boynton, 7 Mass. 483; Shaw *v.* Reed, 12 Pick. 132; Nailor *v.* Bowie, 3 Md. 251.

[3] Lockwood *v.* Crawford, 18 Conn. 361; Fall River Union Bank *v.* Willard, 5 Met. 216; King *v.* Crowell, 61 Me. 244.

By the Civil Code of California, there are specific rules given as to how presentment for payment should be made. By Sec. 3131 it is provided: "Presentment of a negotiable instrument for payment, when necessary, must be made as follows, as nearly as, by reasonable diligence, it is practicable: 1. The instrument must be presented by the holder. 2. The instrument must be presented to the principal debtor, if he can be found at the place where presentment should be made; and if not, then it must be presented to some other person having charge thereof, or employed therein, if no one can be found there. 3. An instrument which specifies a place for its payment must be presented there; and if the place specified includes more than one house, then at the place of residence or business of the principal debtor, if it can be found therein. 4. An instrument which does not specify a place for its payment must be presented at the place of residence or business of the principal debtor, or wherever he may be found, at the option of the presentor. 5. The instrument must be presented upon the day of its maturity; or, if it be payable on demand, it may be presented upon any day. It must be presented within reasonable hours; and, if it be payable at a banking-house, within the usual banking hours of the vicinity; but by consent of the person to whom it should be presented, it may be presented at any hour of the day. 6. If the principal debtor have no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, presentment for payment is excused."

[4] Gilbert *v.* Demis, 3 Met. 495.

[5] Tredick *v.* Wendell, 1 N. H. 80.

dishonored, and notice should at once be given.[1] Sometimes, as a formal matter, a presentation is made, but it is well settled that the mere presence of the paper at the bank in which payable is sufficient.[2] When the bank owns the paper at the time of maturity, its presence in the bank awaiting payment is presumed, and the burden is on the defendant to show the contrary.[3]

Sometimes the accounts of the promisor are examined, to see if there are funds to meet the paper payable at the bank, but this is unnecessary, any competent evidence being available to show that there were no funds there to meet it, and that no one offered payment.[4] Suppose there were funds in the bank belonging to the promisor, and the bank owned the paper, would it be right to protest when no order was given to appropriate the funds to the payment of the paper? It is contended that without a direction the bank is not bound to make an appropriation of the owner's balance for this purpose; but Parsons holds it would be a good defense if the party had sufficient funds in the bank at the time;[5] and this would no doubt be held as reasonable everywhere.

There is a usage in some places, where negotiable paper is left with a bank, for the bank to notify a party, some time before the paper matures, when it should be paid; and if not paid at the time, it may be considered dishonored.[6] In Maine, the custom is sanctioned by judicial decisions, but it is disapproved in New Hampshire and in Maryland, with an intimation that it ought not to be sanctioned.[7]

But whenever a usage prevails in a place, a maker or drawer or acceptor is supposed to have had such usage in view, and this will be the presumption of the law unless a contrary mode be expressed.[8]

[1] Folger *v.* Chase, 18 Pick. 63; Woodin *v.* Foster, 16 Barb. 146; Ward *v.* Northern Bank, 14 B. Mon. 351; Fullerton *v.* Bank of U. S. 1 Pet. 604; Chicopee Bank *v.* Philadelphia Bank, 8 Wall. 641; Reynolds *v.* Chettle, 2 Camp. 596; Saunderson *v.* Judge, 2 H. Bl. 509.

[2] Merchants' Bank *v.* Elderkin, 25 N. Y. 178.

[3] State Bank *v.* Napier, 6 Humph. 270; Berkshire Bank *v.* Jones, 6 Mass. 524; Bank of U. S. *v.* Carmeal, 2 Pet. 543.

[4] Daniel on Neg. Instruments, Sec. 657.

[5] N. & B. 437.

[6] Jones *v.* Fales, 4 Mass. 245; Whitwell *v.* Johnson, 17 Mass. 449.

[7] Daniel on Neg. Instruments, Sec. 658.

[8] Mills *v.* Bank of U. S. 11 Wheat. 431

**§ 103. What will excuse a failure to demand payment.**—The same causes which will excuse a presentment for acceptance will also excuse a presentment for payment, as where, by reason of insuperable obstacles, it is rendered impossible. The circumstances of a general nature which excuse the holder when there has been a failure on his part to make due presentment of the bill or note to the drawee, acceptor, or maker, or to convey due notice of dishonor to the drawer or indorser, may be: 1. The breaking out of a war between the country of the holder and that of the party to whom presentment should be made. During the continuance of hostilities presentment is excused when intercourse is suspended, but when the hindering cause is removed a presentment must be made.[1] 2. Public and positive prohibitions of commercial intercourse between the countries of the holder and that of party to whom presentment should be made.[2] 3. The occupation of the country where the parties live, or where the bill or note is payable, by a public enemy obstructing or suspending commercial intercourse.[3] 4. Political disturbances interrupting or obstructing the ordinary channels of trade or communication.[4] 5. The prevalence of a malignant epidemic disease which suspends the ordinary operations of business.[5] 6. Overwhelming calamity or unavoidable accident which obstructs the usual channels of communication.[6]

### III. PROTEST.

**§ 104. Meaning and effect of.**—A protest is a solemn official process, required by the law merchant to properly authenticate the fact of the dishonor of negotiable paper. It is a declaration, through the medium of a notary, on the part of the holder, against any loss to be sustained by him in consequence of the non-acceptance or non-payment, as the case may be, of a negotiable instrument. The word "protest" signifies to bear

[1] House *v.* Adams, 48 Penn. St. 261: Dunbar *v.* Tyler, 44 Miss. 1; Norr's *v.* Despard, 28 Md. 491; James *v.* Wade, 21 La. An. 548; Harden *v.* Boyce, 59 Barb. 427.
[2] Story on Bills, Secs. 257, 263.
[3] Id. Sec. 261.
[4] Id.
[5] Tunno *v.* Lague, 2 Johns. Cas. 1.
[6] Chitty on Bills, 451: Edwards on Bills, 492: Windham Bank *v.* Norton, 22 Conn. 213.

witness before, or to publish forth, because the notorial act evidences to all the world the fact of dishonor; and the notary's certificate is the formal evidence, without further attestation of the fact by witnesses, though formerly witnesses to a protest were not uncommon.[1]

In a more popular sense, protest includes all the steps necessary to fix the liability of a drawer or indorser upon the dishonor of commercial paper to which he is a party.[2]

**§ 105. What instruments should be protested.**—By the law merchant, when a foreign bill of exchange is not accepted, or not paid at maturity, it must be protested; and no other evidence of the dishonor, except this protest by a notary, is admissible.[3] It is well settled that in this respect our States are considered as foreign to one another, so that a bill drawn in one, payable in another State, is a foreign bill.[4]

By statute in almost all our States, a protest of a promissory note or inland bill of exchange *may* be made by a notary, and the notarial protest is accorded the same force as evidence as in the case of a protest of a foreign bill. It is to be observed, however, that the instrument need not be protested by a notary in order to charge an indorser in the case of a promissory note or inland bill; for the holder may waive the privilege, if he choose to do so, and produce other evidence of dishonor.[5]

The object of requiring a protest in the case of a foreign bill was to obviate the necessity of calling witnesses from a distance to prove the fact of dishonor. The notarial protest under seal is received as the fullest and most satisfactory proof of this fact, and foreign Courts everywhere accept the protest under seal as the highest evidence of the dishonor of a bill.[6]

It is only such bills as are *negotiable* which require a protest by the custom of merchants; hence, bills payable in any other

[1] Brooke, Office and Practice of a Notary, p. 75.

[2] Townsend *v.* Lorrain Bank, 2 Ohio St. 345; Coddington *v.* Davis, 1 Comst. 186.

[3] Young *v.* Bryan, 6 Wheat. 146; Bank of U. S. *v.* Leathers, 10 B. Mon. 64; Smith *v.* Curlee, 59 Ill. 221; Union Bank *v.* Hyde, 6 Wheat. 372.

[4] Dickens *v.* Beale, 10 Pet. 572; Bank U. S. *v.* Daniels, 12 Pet. 32; Phœnix Bank *v.* Hussey, 12 Pick. 483.

[5] Bailey *v.* Dozier, 6 How. 23; Wanger *v.* Tupper, 8 How. U. S. 234.

[6] Byles on Bills, 249.

medium or currency than that of the lawful money of a country are not negotiable, and need not be protested.[1]

**§ 106. Foreign promissory notes,** or notes made in one State to be paid in another, may be indorsed, and then they become similar to a foreign bill of exchange and should, it is believed, be protested, in case of dishonor, by a notary. Brooke says: "It is, perhaps, not of very frequent occurrence for a promissory note to be made abroad, but payable in this country; in such a case, however, the same ceremony as to presentment when due, and protest for non-payment, must be observed as in the case of a foreign bill."[2]

A writer whom we have had occasion to follow with much confidence, says:[3] "Therefore, when an indorsed note is payable in a State or country different from the one where it is drawn—perhaps more especially when the indorser is not of the State or country where it is payable, though no distinguishing difference it seems to us exists—almost every consideration of convenience which would make a protest necessary and competent evidence of presentment and notice in case of a foreign bill, would recognize it as equally competent in respect to the indorser of the note. It has been well said that 'the similarity between the indorsement of notes and the drawing and indorsement of bills of exchange is so great, that there can be no sound reason given for establishing or preserving a distinction between them, and requiring a different character of evidence to prove the same facts with regard to two instruments, which, though different in some respects as to their phraseology, are so essentially similar in their nature and operations.'[4] And there are well-considered cases sustaining it.[5] This view has been taken in Kentucky respecting an indorsed certificate of deposit."[6]

[1] Bank of Mobile *v.* Brown, 42 Ala. 108; Ford *v.* Mitchell, 15 Wis. 304. As to what constitutes negotiable paper, see note to Sec. 76.

[2] Office and Practice of a Notary, p. 130.

[3] Daniel on Neg. Instruments, Sec. 928.

[4] Parker, C. J.; Williams *v.* Putnam, 14 N. H. 540, Edwards on Bills, 54^.

[5] Ticonic Bank *v.* Stackpole, 41 Me. 302.

[6] Piner *v.* Clary, 17 B. Mon. 645.

**§ 107. By whom the protest should be made.**—A notary public, as a general rule, is the proper person to make protest. The notary being a public officer, commissioned by the State, having an official seal, his official acts have full faith and credit in foreign countries as well as in his own. In case no notary can be found, the protest may be made by any respectable private person of the place where the bill is dishonored.[1] In England, it is required by statute that, in case of inland bills, the protest by a private person shall be made in the presence of two or more credible witnesses.[2] In some of our States, provision is made for protest in case of the death, inability, or absence of a notary.[3] The Civil Code of California provides: "Protest must be made by a notary public, if with reasonable diligence one can be obtained; and if not, then by any reputable person in the presence of two witnesses."[4]

**§ 108. The place of protest** is usually where the dishonor occurs. Thus, in case of non-acceptance, the protest should be made in the place where the bill is presented. When a bill is to be presented at one place and payable at another, in case of non-acceptance, it is held it may be protested at either place;[5] but the better and more convenient rule would be to protest the bill at the place where acceptance is refused. By statute, in England, understood to be declaratory of the common law, it is declared that a protest at the place of payment, in case of a refusal to accept, without further presentment to the drawee, is sufficient.[6] Where the drawee accepts in one place to pay in another, the latter will be obviously the proper place to make protest in case of dishonor.[7]

The manner of making protest should conform to the law of the place where the protest is made.[8]

[1] Burke *v.* McKay, 2 How. U. S. 66.
[2] 9 and 10 William III, Chap. 17.
[3] See Sec. 19.
[4] Sec. 3226. This rule is quite general. See Chitty on Bills, 333; Reed *v.* Bank of Ky. 1 T. B. Mon. 91; Herkimer Co. Bank *v.* Cox, 21 Wend. 119; Bank *v.* Porter, 2 Watts, 141; French Code of Commerce, Art. 173.
[5] Chitty on Bills, 334. By the Civil Code of California, Sec. 3228, a protest for non-acceptance must be made at the place of presentment for acceptance.
[6] 2 and 3 William IV, Chap. 98.
[7] Story on Bills, Sec. 284.
[8] Turner *v.* Rogers, 8 Ind. 139; Carter *v.* Union Bank, 7 Humph. 548.

**§ 109. Formal preparation of protest.**—Before a protest for dishonor can be made, the *notary himself*, unless by statute, or a well-established custom, a deputy is authorized, must make a presentment for acceptance or payment. Then, in case of refusal, it is his duty to "note" the fact at the time, on the *very day* of dishonor.[1] This "noting," as it is termed, has become a very important step in the protest; and is by some termed "an initial protest."[2] It was said, in an English case, that "noting is unknown to the law, as distinguished from protest, and has grown into practice within these few years."[3]

Unless this "noting" be made on the very day of dishonor, the protest cannot be received as evidence of the fact of dishonor; for the notary will not be permitted to trust to his memory for the necessary particulars.[4] The "noting" may be either upon the instrument protested, or in the notary's register. It is a mere memorandum of the fact of presentment, of refusal of acceptance or payment, the name of the party to whom, and the place where presented, with the time and date, and signed by the initials of the notary. When this is done, the full and complete protest may be made out at any time afterward, which act is known as "extending the protest."[5] In a case in Scotland, the extension of a protest was permitted fifteen years after noting.[6]

A copy of the protest need not be sent to the drawer or indorser; it is well settled that notice of the fact of protest is all either of these is entitled to, with a description of the instrument protested, so they shall know with certainty what it is, and the parties to it.[7]

[1] Thomson on Bills, 315.

[2] Chaters *v.* Bell, 4 Esp. 48; Story on Bills, Sec. 27.

[3] Leftly *v.* Mills, 4 T. R. 170.

[4] Thomson on Bills, 312.

[5] Geralopulo *v.* Wieler, 10 C. B. 690; Robbins *v.* Gibson, 1 M. & S. 288; Bailey *v.* Dozier, 6 How. U. S. 23; Bank of Decatur *v.* Hodges, 9 Ala. 631; Cayuga Bank *v.* Hunt, 2 Hill, 635. In California, the protest must be made on the day of presentment, or on the next business day, but it may be written out at any time thereafter. Civil Code, Sec. 3229.

[6] Thomson on Bills, 312.

[7] Goodman *v.* Harvey, 4 Ad. & El. 870; Cromwell *v.* Hynson, 2 Esp. 511; Dennistoun *v.* Stewart, 17 How. U. S. 606; Lenox *v.* Leverett, 10 Mass. 1; Wells *v.* Whitehead, 15 Wend. 527.

**§ 110. Contents and particulars of protest.**—The certificate of protest must contain certain essential particulars, in order to give the necessary evidence of the fact of dishonor. It is necessary that it contain: 1. The time of presentment; 2. The place of presentment; 3. The fact and manner of presentment; 4. The demand of payment; 5. The fact of dishonor; 6. The name of the party by whom presentment was made; 7. The name of the person to whom presentment was made.[1] Usually, the facts regarding notice are embodied in it by the notary.

**§ 111. The date of protest** must expressly appear, for otherwise it does not appear whether the instrument was dishonored, and therefore entitled to protest; for if the protest state that the bill was "this day protested," and is dated on a day previous to, or after, the day of maturity, it is defective on its face.[2] When the hour of the day is not stated, it will be presumed that the presentment and demand were made at the usual and proper business hours of the day.[3]

**§ 112. As to the place of presentment.**—When the bill or note is not payable at a particular place, it is not absolutely necessary to state at what place the presentment and demand

[1] Daniel on Neg. Instruments, Sec. 950, and see Appendix for various forms of protest.

By the Civil Code of California, Sec. 3227, it is provided: "Protest must be made by an instrument in writing, giving a literal copy of the bill of exchange, with all that is written thereon, or annexing the original; stating the presentment, and the manner in which it was made; the presence or absence of the drawee as the case may be, the refusal to accept or to pay, or the inability of the drawee to give a binding acceptance; and in case of refusal the reason assigned, if any; and finally, protesting against all the parties to be charged." In Mississippi, by Act of April 5th, 1872, it is provided that the protest by a notary shall state: whether demand was made, of whom, when, and where, whether he presented such bill or note, whether notices were given, to whom, in what manner, where the same was mailed, and when and to whom, and where directed, and every other fact touching the same. Sec. 9. In New Jersey, notaries are required to note in a book a protest which is to show the time when, place where, and upon whom demand of payment was made, with a copy of the notice of non-payment, how served and the time when, and if sent by post, to whom the same was directed, at what place and when the same was put into such post-office, to which they are to sign their names, and when called upon in Court, to refer to such record. Nixon's Dig. p. 770.

[2] Walmsley *v.* Acton, 44 Barb. 312.

[3] Burbank *v.* Beach, 15 Barb. 326; De Wolf *v.* Murray, 2 Sandf. 166.

was made, if the fact appears that it was presented to the person entitled to pay it; but when it is made payable at a particular place, as at a bank, the certificate must show a presentment and demand at such place.[1]

**§ 113. A presentment and demand for payment must appear,** and are usually so stated in the certificate, which states that presentment of a certain instrument was made to a person, naming him, and payment demanded. It has been differently decided whether both these facts must appear, namely, the fact of presentment, and the demand of payment. It seems to me that a presentment at the time of maturity implies a demand for payment, and this should be inferred; but it has been decided that a mere statement of "presentment" is not in itself sufficient, there must appear further a demand.[2] And it would also seem that a demand implies a presentment of the bill or note, and so it was decided in Louisiana;[3] but in the United States Supreme Court (by a divided Court, however) it was decided that a "demand" did not necessarily imply a "presentment."[4] It will, therefore, be the proper and safer course to state in the certificate both presentment and demand.

**§ 114. Other facts appearing by the certificate.**—The fact of dishonor must appear either by a refusal of the party to whom presentment was made, or by his absence from the specified place or his regular place of business or residence, with no one to act for him to discharge his obligation. Without this appearing from the certificate, it cannot be regarded as sufficient.[5] It is not material what words are used, provided the fact of a refusal or a failure to pay is apparent. So, if the certificate states that the reason of protest was the non-payment of the instrument, it is sufficient.[6]

[1] People's Bank *v.* Brooke, 31 Md. 7.

[2] Nave *v.* Richardson, 36 Mo. 130; Farmers' Bank *v.* Allen, 18 Md. 475. See Farmers' Bank *v.* Bowie, 4 Md. 290.

[3] Nott *v.* Beard, 16 La. An. 308.

[4] Musson *v.* Lake, 4 How. 262.

When a protest states in substance a demand on the drawer and notice of non-payment, it is sufficient in point of form. Crowley *v.* Barry, 4 Gill, 294.

[5] Arnold *v.* Kinloch, 50 Barb. 44; Littledale *v.* Maberry, 43 Me. 264.

[6] Young *v.* Bennett, 7 Bush, 477.

The name of the party to whom presentment was made must distinctly appear, and when a demand should be made from a firm, it must appear that payment or acceptance was demanded from a person who was a member of the firm.[1] When payable at a bank, it is only necessary to state that payment was demanded there without naming any particular person from whom payment was demanded.[2]

Usually, it is stated at whose instance the protest is made, and that this party looks to certain others for payment, costs of protest, and damages; but it has been decided that this is no essential part of the protest,[3] though it is the better practice to conform to usage and state at whose request the protest was made.

The reasons are also stated for refusal; but in general this is not necessary, the fact of refusal being only essential. By the Civil Code of California, the reasons assigned for a refusal are required to be stated in the protest.[4]

**§ 115. When protest unnecessary.**—When the drawer of a bill of exchange has failed to place funds in the hands of the drawee to meet it, and has no reasonable expectation that it will be met, a demand of payment and protest are unnecessary to hold him.[5]

In regard to this, a writer says: "The rule is often laid down in the language that the want of funds excusing the holder from giving notice; the statement of it in this form arising from the fact that, when the bill has been improvidently drawn, it turns out that there were no funds to meet it. But the converse proposition is not true, that whenever there are no funds provided to meet the bill, the drawer was improvident in drawing it. The drawee may have promised to accept or pay for the drawer's accommodation, or have come under an obligation founded on legal consideration to do so. And the true criterion of the right to require due demand and notice is not whether

[1] Otsego Co. Bank *v.* Warren, 18 Barb. 290.
[2] Hildeburn *v.* Turner, 6 How. U. S. 69.
[3] Duckert *v.* Van Lilienthal, 11 Wis. 56.
[4] Sec. 3227.
[5] Harness *v.* Davies Co. Sav. Ass. 46 Mo. 357; Merchants' Bank *v.* Easley, 44 Mo. 286; Mehlberg *v.* Fisher, 24 Wis. 607.

the drawer had funds in the drawee's hands, but *whether or not the drawer had a right to expect or require that the drawee would honor his bill.*" [1]

Under the law of Indiana, a negotiable note, payable at a bank in that State, need not be protested for non-payment to hold the indorser; notice of a demand and non-payment is sufficient.[2] So in Georgia, unless a note is payable at a chartered bank, no protest is necessary.[3]

### IV. NOTICE OF PROTEST.

**§ 116. Who must have notice.**—The maker of a bill and the indorsers must have notice of protest, in order to fix their liability to pay in case of default; and so likewise must the indorsers on a promissory note. It is regarded as one of the conditions of the contract entered into on the part of the maker and indorsers, that they shall be notified of any failure to pay by the party primarily liable; they only agree to pay in case a certain party does not. The law is very strict in regard to this notice. Thus, if a note has been indorsed to the holder in conditional payment of a debt, a failure to give the indorser notice will not only discharge the indorser upon the note, but it will also operate to discharge him as debtor upon the original consideration.[4]

**§ 117. Manner of giving notice.**—The notice may be verbal or written;[5] usually it is written, in order more effectually to be produced and recorded as evidence. Mere knowledge of

[1] Daniel on Neg. Instruments, Sec. 1074.

[2] Green *v.* Louthain, 49 Ind. 139.

[3] Salmons *v.* Hoyt, 53 Geo. 493.

[4] Shipman *v.* Green, 1 Green, (N. J.) 251.

In Georgia, (Code, Sec. 2739) the indorsers of a bill or note, not to be negotiated at a chartered bank, are not entitled to notice of non-payment or non-acceptance, to charge them as indorsers. Frank *v.* Longstreet, 44 Ga. 63. There is a similar statute in Indiana. King *v.* Vance, 46 Ind. 246; Parkinson *v.* Finch, 45 Id. 629.

[5] Boyd's Admr. *v.* City Sav. Bank, 15 Gratt. 501; Cuyler *v.* Stevens, 4 Wend. 566; Williams *v.* Bank of U. S. 2 Pet. 97; Housego *v.* Cowne, 2 M. & W. 348; Thompson *v.* Williams, 14 Cal. 160. By Civil Code of California, it is provided, Sec. 3143: "A notice of dishonor may be given in any form which describes the instrument with reasonable certainty, and substantially informs the party receiving it that the instrument has been dishonored."

dishonor does not constitute notice, for notice signifies more; it is to come from a certain party, with a demand on the other, showing that the latter is looked to for payment.[1]

A verbal notice must be given directly to the party, or must be sent by a messenger to his place of business or residence. Such a notice is more liberally construed than a written notice. Thus, where the holder's clerk told the drawer that the bill had been duly presented, and that the acceptor could not pay it, and the drawer replied that he would see the holder about it, this was held to be sufficient evidence to warrant the jury in finding that the fact of the dishonor of the bill was sufficiently communicated to the drawer.[2]

**§ 118. Form of the notice.**—Some essential particulars are required in the notice, the absence of which renders it worthless. When we consider what the notice is intended to show, namely, the fact of dishonor of a certain instrument, and that the party notified is looked to, by the one who gives notice, to make the obligation good, we can at once determine what essential qualities the notice must have.[3] These may be summarized, and the notice will then contain the following elements: 1. Such a description of the bill or note as may apprise the party of the instrument dishonored. 2. That it has been dishonored, having been duly presented for acceptance or payment. 3. That the holder looks to the party notified for payment.[4]

**§ 119. As to the description of the instrument.**—The note or bill should be described in such terms as to show unmistakably what it is—the date, the amount, the name of the drawer or maker.[5] The law is satisfied if the description be such, under all the circumstances of the case, as to leave no reasonable doubt in the mind of the party what bill or note was referred to.[6] The notice, therefore, may not exactly describe

[1] Juniata Bank *v.* Hale, 16 S. & R. 157; Caunt *v.* Thompson, 7 C. B. 400.

[2] Metcalfe *v.* Richardson, 11 C. B. 1011 (73 E. Com. L.).

[3] In Gates *v.* Beecher, 60 N. Y. 184, it was held that a notary's certificate of the protest of a note, in the usual form, contains all the information which it is necessary to give an indorser, and sending him a copy of such certificate should, in the absence of any proof by him, be deemed a sufficient notice.

[4] Thompson *v.* Williams, 14 Cal. 162.

[5] Story on Notes, Sec. 349.

[6] Shed *v.* Brett, 1 Pick. 401; Gilbert *v.* Dennis, 3 Met. 495; 1 Pars. N. & B. 472.

the note; it may happen to misstate some particular, and yet it will be held sufficient if it is apparent that the party could not have been misled as to the instrument intended. Thus, in a case where the notice described the note in a bank correctly, except as to its date, and it appeared that there was no other note of the makers indorsed by the defendant at the bank, it was held that the notice was sufficient.[1]

The entire omission of the maker's name in the notice of dishonor would be fatal;[2] but notice to the acceptor, describing the bill as "drawn by you," though the drawer was not named, there being no proof that he had drawn or indorsed any other paper with which it could be confounded, and it being otherwise correctly described, was held sufficient.[3] In a case where the notice to the indorser called the note *Jotham Cushing's* note, but the name was in fact *Jotham Cushman*, in an action against the indorser the Court directed the jury to find for the plaintiff, if they believed the defendant must, from the notice, have necessarily known what note was intended, and this direction was held to be correct.[4]

A misdescription of the amount, or of the names of the parties, or the time the paper fell due, will not render the notice defective, provided it is certain to what instrument the notice refers.[5]

Thus, a notice was in this form:

"$600. Cayuga Bank, Auburn, May 3d, 1848.

"SIR: Take notice that S. Warden's note for *three hundred* dollars, payable at this bank, was this evening protested for nonpayment, and the holders look to you for the payment thereof."

The amount was misstated, it being in the note $600; but it was held sufficient.[6]

The decisions go to the extent of holding that a notice to the indorser of a note, simply stating the name of the maker, the

[1] Mills *v.* Bank of U. S. 11 Wheat. 431. See Cook *v.* Litchfield, 5 Sandf. 340.
[2] Home Ins. Co. *v.* Green, 19 N. Y. 518.
[3] Gill *v.* Palmer, 29 Conn. 54.
[4] Smith *v.* Whiting, 12 Mass. 6.
[5] Carter *v.* Bradley, 19 Me. 62; Snow *v.* Perkins, 2 Mich. 238; McCune *v.* Belt, 38 Mo. 291; Moorman *v.* Bank of Alabama, 12 Ala. 353.
[6] Cayuga Co. Bank *v.* Warden, 1 Comst. 413; S. P. Bank of Alexandria *v.* Swan, 9 Pet. 33; Bank of Rochester *v.* Gould, 9 Wend. 279; Wood *v.* Watson, 53 Me. 300; Rowan *v.* Odenheimer, 5 Sm. & M. 44.

amount, and the fact that it was indorsed by the party to whom notice was sent, is sufficient. But if there are any circumstances which caused this meager description to mislead the party receiving the notice—as, for instance, if he were the indorser of two or more notes to which the terms of the notice might equally apply—then the notice might be void for uncertainty of description.[1] The notice should be signed by some one, as showing at whose instance it was given; it need not mention him as the holder.[2]

**§ 120. The fact of dishonor.**—It is sufficient if it can be reasonably inferred from the notice that the instrument was dishonored, and the fact need not be expressly stated; but it must appear from the instrument, by the use of some word or phrase, that the note or bill was dishonored. The mere statement that it has not been paid is not sufficient.[3] More than the fact of non-payment is required; it should appear that a due presentment was made. Thus, in Page *v.* Gilbert,[4] Walton, J., says: "A notice to the indorser of a note, which merely informs him of the non-payment of the note, and demands payment of him, without stating that payment has been demanded of the maker, or giving any legal excuse for not demanding it of him, is not sufficient to charge the indorser." But the direct statement that the instrument has been "dishonored" is sufficient, for that implies the necessary steps to dishonor, a presentment and demand.[5] So the use of the term "protested" is sufficient to apprise the party of the dishonor.[6] So, when it was stated, "your bill is this day returned with charges,"[7] or

[1] Daniel on Neg. Instruments, Sec. 979; 1 Pars. N. & B. 473; Story on Bills, Sec. 301.

[2] Bradley *v.* Davis, 26 Me. 45; Gillespie *v.* Nevill, 14 Cal. 408; Klockenbaum *v.* Pierson, 16 Cal. 375; Walker *v.* State Bank, 8 Miss. 704; Shed *v.* Brett, 1 Pick. 401.

[3] Dole *v.* Gold, 5 Barb. 490; Lockwood *v.* Crawford, 18 Conn. 361; Clark *v.* Eldridge, 13 Met. 96; Armstrong *v.* Thurston, 14 Md. 148; Phillips *v.* Gould, 8 C. & P. 355; Strange *v.* Price, 10 Ad. & El. 125; Hartley *v.* Case, 4 Barn. & C. 339

[4] 60 Me. 488.

[5] Stocken *v.* Collin, 9 C & P. 653; Lewis *v.* Gompertz, 6 M. & W. 400.

[6] Wheaton *v.* Willmarth, 13 Met. 422; McFarland *v.* Pico, 8 Cal. 636; Eastman *v.* Turman, 24 Cal. 383; Kilgore *v.* Buckley, 14 Conn. 362; Smith *v.* Little, 10 N. H. 526; Housatonic Bank *v.* Laflin, 5 Cush. 546.

[7] Grudgeon *v.* Smith, 6 Ad. & El. 499.

"expenses,"[1] or "with charges of protested exchange,"[2] it is sufficient.

**§ 121. As to notice of demand for payment from the party** notified, it is the usual course to insert it; but it is held that the fact of apprising the party of the dishonor of a certain note or bill inferentially notifies him that he is looked to for payment. Thus, in United States *v.* Carneal,[3] Story, J., giving the opinion of the Court, says: "A suggestion has been made at the bar, that a letter to the indorser, stating the demand and dishonor of the note, is not sufficient unless the party sending it also informs the indorser that he is looked to for payment. But when such notice is sent by the holder, or by his order, it necessarily implies such a responsibility over. For what other purpose could it be sent? We know of no rule which requires a formal declaration to be made to this effect. It is sufficient if it may be reasonably inferred from the nature of the notice." The prevailing rule is, therefore, that the mere fact of giving notice to the party implies that he is looked to for payment.[4] But the safer course is to give all the elements of the notice before laid down. It is now decided that it is unnecessary to accompany the notice of dishonor of a foreign bill of exchange with a copy of the protest;[5] but information of the protest should be sent if the party to whom notice is transmitted resides abroad.[6]

[1] Everard *v.* Watson, 1 El. & B. 801.

[2] De Wolf *v.* Murray, 2 Sandf. 166.

In Reynolds *v.* Appleman, 41 Md. 615, a notarial notice of protest was held sufficient in the following words: "Baltimore, December 23d, 1871—Reynolds & Savin: Please take notice that M. D. Savin, C. F. Abbott's note, dated Baltimore, September 20th, 1871, payable ninety days after date to the order of Reynolds & Savin, for $340, payable at the Third National Bank, and by you indorsed, is delivered to me by the cashier of the Western National Bank for protest, and the same not being paid, payment thereof having been demanded and refused, is protested, and will be returned to the said cashier, and that you will be held liable for the payment thereof." The Court held that, in substance and by fair implication, this notice gave all that was necessary, though it is somewhat informal.

[3] 2 Pet. 543.

[4] Warren *v.* Gilman, 5 Shep. 360; Cowles *v.* Harts, 3 Conn. 517; Townsend *v.* Lorraine Bank, 2 Ohio St. 345; Burgess *v.* Vreeland, 4 N. J. 71; Story on Notes, Sec. 353.

[5] Hooker *v.* Anderson, 21 Wend. 372; Goodman *v.* Harvey, 4 Ad. & El. 870; Wallace *v.* Agry, 4 Mason, 336.

[6] Rogers *v.* Stephens, 2 T. R. 713.

**§ 122. The party who gives notice.**—The holder or his agent is the proper party to give notice. But notice by any party whose name is on the instrument and is liable, will be available for the holder. Thus, suppose the fourth indorser be the holder: he notifies the third, the third the second, and the second the first; the latter is liable to all the parties.[1]

In case the holder notifies all the parties, and the notice reaches them, then an intermediate indorser who takes up the bill or note may avail himself of this notice against any of the preceding indorsers, though he himself has not given the notice. But suppose a holder to have attempted to give notice and failed, using all due diligence, so that *he* did what entitled him to recover, and that a party on the note takes it up, can the latter, if he takes up the note or bill, recover on it, though he has not given notice? It is agreed that if the party takes up the note or bill from the one who was entitled to recover on it, because he had, under the circumstances, used diligence in giving notice, that the party so paying is substituted to the rights of the other, and is entitled to recover.[2]

It is certain a mere stranger cannot give notice to inure to any one's benefit. The party bound to pay has a right to notice from some one who has a right of action against him, and who in this way apprises him that he will stand on his rights. It is, therefore, incompetent for one whose liability is not fixed to give notice.[3] The question has arisen, whether an acceptor could give notice. In the case of Chapman *v.* Keene,[4] it was decided, overruling other cases, that notice might emanate from another party besides the holder, and the latter might avail himself of it. This was approved in Maryland, in Brailsford *v.* Williams.[5] In Massachusetts, it has been held that a drawee who refuses acceptance cannot give a valid notice.[6]

[1] Hilton *v.* Shepherd, 6 East, 14. See Bachellor *v.* Prest, 12 Pick. 406; Renshaw *v.* Triplett, 23 Mo. 213; Stafford *v.* Yeates, 18 Johns. 327; Bank of U. S. *v.* Goddard, 5 Mason, 366; Chapman *v.* Keene, 3 Ad. & El. 193; Jameson *v.* Swinton, 2 Camp. 373; Story on Bills, Sec. 304.

[2] 1 Pars. N. & B. 627; Thomson on Bills, 337. See Beale *v.* Parish, 20 N. Y. 407.

[3] Story on Bills, Sec. 304; Bayley on Bills, 254; Chanoine *v.* Fowler, 3 Wend. 173; Harrison *v.* Ruscoe, 15 L. J. Exch. 110; Cal. Civil Code, Sec. 3142.

[4] 3 Ad. & El. 193.

[5] 15 Md. 157.

[6] Stanton *v.* Blossom, 14 Mass. 116.

**§ 123. Notice by an agent.**—Notice may be given by an agent, either in his own name or that of his principal.[1] In this respect, a notary is the agent of the holder of a negotiable instrument. In case of a note given for collection, the party to whom it is intrusted is held to a strict liability for any failure to give notice.[2] So banks are liable for failure to give notice of the dishonor of notes left with them for collection; they are bound to employ a person of sufficient competency and fidelity for protesting and giving notice.[3]

It should be remembered that by the common law it is no part of the duty of a notary to give notice, unless he is specially employed to do so;[4] but usually notaries are constituted agents of a party for this purpose, and are then liable for any failure to give notice. And now, by statute in several of our States, it is incumbent on the notary to give notice.[5]

When a bank receives paper for collection in a distant place, and employs an agent to make protest or give notice, it is often a question whether, under such circumstances, the bank is liable for any default of its sub-agent. But, on general principles, one to whom is intrusted a duty, who employs an agent under him, is responsible for his acts: so the bank is therefore held liable; but it may show that, by a a well-understood custom and course of dealing in the mercantile community, this was the usual way

[1] Woodthorpe *v.* Lawes, 2 M. & W. 109; Rogerson *v.* Hare, 1 Jur. 71; Palmer *v.* Whitney, 25 Ind. 58.

[2] Freedman's Bank *v.* Perkins, 7 Shep. 292; Bank of Missouri *v.* Vaughan, 36 Mo. 90; Allen *v.* Suydam, 20 Wend. 321; Bank of Utica *v.* Smith, 18 Johns. 230; Bank of Utica *v.* McKinster, 11 Wend. 475.

[3] Smedes *v.* Utica Bank, 20 Johns. 384.

[4] Harris *v.* Robinson, 4 How. U. S. 336; Bank of Rochester *v.* Gray, 2 Hill, 227.

[5] In Alabama, it is incumbent on the notary to give notice "according to law." Rev. Code, Sec. 1063. By Pol. Code of California, Sec. 794, it is the duty of notaries, "when requested acceptance and payment of foreign, domestic, and inland bills of exchange or promissory notes, and to protest the same for non-acceptance and non-payment."

By statute, in Illinois, the notary is required to give notice to the maker and indorsers on the same day of protest, or within forty-eight hours after the time of protest. Rev. Stat. 1874, p. 721. In Iowa, it is provided: "The notary making demand may inform the indorser, or any party to be charged, if in the same town or township, by notice deposited in the nearest post-office to the parties to be charged on the day of demand, and no other notice shall be necessary to charge said party." Code 1873, Sec. 2095. In Louisiana, notice is required by the notary. Dig. Stat. 1870, Sec. 2539. So in Maine. Rev. Stat. 1871, p. 327; in Minnesota, 1 Bissell's Stat. p. 205; in New Jersey, Nixon's Dig. p. 771; in Nebraska, Gen. Stat. 1873, p. 494; in Mississippi, Act April 5th, 1872. Sec. 9.

to perform the duty, and thus exonerate itself from any liability.[1]

**§ 124. The proper person to receive notice** is the party who is looked to for payment when the party primarily liable fails to pay, as the maker in case of a note, the acceptor in case of a bill. Notice given to a general agent of the party is sufficient as if given to the principal in person.[2] So, notice of protest to charge a corporation in whose name the indorsement is made, is properly served on the general agent of the corporation.[3] But notice to a party's attorney or solicitor, unless he is specially authorized to receive it, is insufficient.[4] If a paper be signed by a duly authorized agent in the principal's name, notice should be given to the principal, who is the party liable.[5] But when an agent draws a bill in his own name, but for account of his principal, notice must be given to the agent, who is the drawer. A notice given to the principal, who is not a party to the bill, is not sufficient.[6]

In cases of partnership, notice to any one partner is notice to the firm.[7] If an indorser be a member of a firm, notice to the firm is sufficient.[8] If the drawer of a bill be in fact the partner of the acceptor, either generally or in the single adventure in which the bill made a part, in that event notice of dishonor by the holder to the drawer need not be given; for the knowledge of one partner is the knowledge of the other, and notice to one is notice to the other.[9] And if one of the firm be dead, notice to the survivor is sufficient.[10]

In case of death of the party to be notified, notice should be sent to his executor or administrator, if there be any, and they can be ascertained, but if not, a notice addressed to the deceased

[1] Fabens *v.* Mercantile Bank, 23 Pick. 382; Dorchester Bank *v.* New England Bank, 1 Cush. 177. See further on this point Sec. 135.

[2] Cross *v.* Smith, 1 M. & Sel. 545; Fassin *v.* Hubbard, 55 N. Y. 471.

[3] Bank of Auburn *v.* Putnam, 1 Abb. App. Dec. 80.

[4] Louisiana State Bank *v.* Ellery, 16 Mart. 87.

[5] Clay *v.* Oakley, 17 Mart. 137.

[6] Grosvenor *v.* Stone, 8 Pick. 79.

[7] Gowan *v.* Jackson, 20 Johns. 176; People's Bank *v.* Keech, 26 Md. 521; Story on Bills, Sec. 308.

[8] Rhett *v.* Poe, 2 How. U. S. 457.

[9] Id.

[10] Hubbard *v.* Matthews, 54 N. Y. 50.

by name would be sufficient.[1] Notice to one of several executors or administrators would be sufficient.[2] It has been decided that notice addressed to "the estate" would not suffice, as that term applies as well to the heir at law as to the executor or administrator.[3]

In case of bankruptcy, it is best to give notice to the bankrupt as well as to his assignee; but if no assignee has been appointed, notice to the bankrupt is sufficient.[4] It has, however, been thought sufficient to notify the bankrupt alone.[5]

Notice left with a clerk at the party's place of business, without proof as to the person with whom it was left, is sufficient, and proof that such person was not the party's agent has been held irrelevant, notice being left at the right place.[6]

**§ 125. Notice, when the parties reside in the same place,** is in general personal, unless otherwise provided by statute.[7] Where both parties live in the same town, the sender of the notice is bound to show that it was actually received by the indorser in due season. If notice is sent by mail, it will not be sufficient, unless it be shown it was actually received in due time.[8] But now, in large cities and towns, since the mails are delivered several times during the day, it is allowed generally by statute to deposit a notice in the post-office when the parties reside in the same city, and the mere deposit, without it being shown that it was actually received, will be sufficient.[9] "In large com-

[1] Maspers *v.* Pedesclaux, 22 La. An. 227; Oriental Bank *v.* Blake, 22 Pick. 206; Cayuga Bank *v.* Bennett, 5 Hill, 236; 1 Pars. N. & B. 501; Cal. Civil Code, Sec. 3146.

[2] Beales *v.* Peck, 12 Barb. 245; Lewis *v.* Bakewell, 6 La. An. 359.

[3] Massachusetts Bank *v.* Oliver, 10 Cush. 557.

[4] Ex parte Moline, 19 Ves. 216.

[5] 1 Pars. N. & B. 500.

[6] Edson *v.* Jacobs, 14 La. An. 494; Bank of Louisiana *v.* Mansaker, 15 La. An. 115; Mechanics' Bank Assn. *v.* Place, 4 Duer, 212.

[7] Cabot Bank *v.* Warner, 10 Allen 522.

[8] Bowling *v.* Harrison, 6 How. U. S. 248; Shelbourne Falls Nat. Bank *v.* Townsley, 102 Mass. 177; Boyd *v.* City Savings Bank, 15 Gratt. 501; Barnes *v.* Caldwell, 3 Pittsb. 336.

[9] By Laws of New York of 1857, Chap. 416, such notices may be served by depositing them—with the postage thereon prepaid—in the post-office of the city or town where such promissory note, check, draft, or bill of exchange was payable, or legally presented for payment or acceptance, directed to the indorser or drawer at such city or town. And in Requa *v.* Collins, 51 N. Y. 144, it was held that the degree of diligence required under this statute, to ascertain the

mercial towns, the uniform practice," says the Court in Bell *v.* Hagerstown Bank,[1] "now is to reach the party to be affected with notice, through the post-office, when both reside within the limits of the penny-postman; but it must be shown to have been put in in time to be delivered before the expiration of the day following the refusal." Thus, it has been held, that where a bill was dishonored in Philadelphia, and notice sent to an indorser in Providence, the latter might give notice to a previous party, residing in Providence, through the post-office.[2] Sometimes the custom or usage of banks in certain places, in the absence of any statutory provision, will permit notice being sent through the mail.[3]

**§ 126. Who may be regarded as living in the same place** is an important question to determine, when notice may be sent through the mail. The best authorities hold that even if a person lives a short distance from a town or city, but is in the habit of receiving his letters at a particular office there, a notice deposited in that office will be sufficient. This is the view of the United States Supreme Court, and is generally followed;[4] though it has sometimes been held the notice should be sent to the post-office nearest him.[5]

residence of the party, is no greater than that required by the common law in a case where payment differs from the place of residence. By Civil Code of California, Sec. 3144, notice may be given under these circumstances through the mail. In Georgia, a deposit in the post-office, under Sec. 2781 of the Code, is sufficient. McNatt *v.* Jones, 52 Ga. 473. In Minnesota, notice may be given through the post-office, under these circumstances. 1 Bissell's Stat. 205. Also in Iowa. Code, Sec. 2935. In Illinois, it is provided that the notice must be personal if the parties reside in the town, precinct, or village where the protest was made, or within a mile thereof; but if more than a mile, notice may be given by mail or other safe conveyance. If the city where the protest is made contains 10,000 or more inhabitants, the notice may be forwarded by mail. Rev. Stat. 1874, p. 721.

[1] 7 Gill. 216.

[2] Ray *v.* Porter, 42 Ala. 327; Eagle Bank *v.* Hathaway, 5 Met. 213. See, to the same point, Manchester Bank *v.* Fellows, 8 Fost. 313; Hartford Bank *v.* Stedman, 3 Conn. 489.

[3] Bowling *v.* Harrison, 6 How. U. S. 248; Gindrat *v.* Mechanics' Bank, 7 Ala. 324; Chicopee Bank *v.* Eager, 9 Met. 583.

[4] Bank of Columbia *v.* Lawrence, 1 Pet. 578; and see, to the same effect, Gist *v.* Lybrand, 3 Ohio, 307: Bell *v.* State Bank, 7 Blackf. 457; Jones *v.* Lewis, 8 Watts & S. 14; Barrett *v.* Evans, 28 Mo. 323; Bondurant *v.* Everett, 1 Met. Ky. 558.

[5] Ireland *v.* Kip, 11 Johns. 231; Edwards on Bills, 602.

**§ 127. When notice is personally served,** it should be at his residence or established place of business; and when no one is found at the place of business, it is held that one is not bound to proceed to his private residence and give notice.[1] And when a party has two or more places of business in the same town, notice may be sent to either. When notice is sought to be given at the private dwelling of a party, it is sufficient to leave it with the wife, private secretary, or any other person on his premises.[2]

A certificate of a notary—"left at his house at——"—would be sufficient to answer the requirement of the law.[3] But it was held in the same case that proof that notice was left with a boy in the yard, who said that he was the indorser's son, and who went toward the house, was insufficient.

It will not do merely to leave notice in a building where a party transacts his business—it must be at his very place of business.[4] If the dwelling or apartments occupied by the indorser be closed, and he had left the place, it would be of no use to proceed further.[5] When a party lives at a private boarding-house, it is to all intents and purposes his residence, and notice given there to a person belonging to the house, in his absence, is sufficient.[6] If a party live at a public house, and if after inquiry the notary is informed that he is not in, it would be sufficient to leave a notice at his room, or at the door of his room.[7]

But in all cases it should be the duty of the notary to inquire for him first; for when it does not appear that he was really at the hotel, or that the notary inquired for him, or that notice was left with some competent person for him, the omission would be fatal.[8]

[1] Goldsmith *v.* Blane, 1 Maule & S. 554; Bayley on Bills, 176; Lord *v.* Appleton, 15 Me. 179; Williams *v.* Bank of U. S. 2 Pet. 96; Grinman *v.* Walker, 9 Iowa, 426; Nevins *v.* Bank, 10 Mich. 547; Van Vechten *v.* Pruyn, 3 Kern. 549.

[2] Blakely *v.* Grant, 6 Mass. 386; Fisher *v.* Evans, 5 Binn. 542; Cromwell *v.* Hynson, 2 Esp. 511; Merz *v.* Kaiser, 20 La. An. 377.

[3] Adams *v.* Wright, 15 Wis. 408.

[4] Kleinman *v.* Boernstein, 32 Mo. 311.

[5] Howe *v.* Bradley, 19 Me. 35.

[6] Bank of U. S. *v.* Hatch, 6 Pet. 250.

[7] Howe *v.* Bradley, 19 Me. 31.

[8] Ashley *v.* Gunton, 15 Ark. 415.

If no one be found at the party's place of residence, a notice put in the keyhole is sufficient. Stewart *v.* Eden, 2 Cal. 121.

**§ 128. Notice, parties residing in different places.**—The mail is the usual mode of giving notice when the parties reside in different places. A party, under these circumstances, fully discharges his duty if, at the proper time, he deposits a notice, postage prepaid, in the mail, and he is not bound then to show that such notice was actually received, because he is not held responsible for any miscarriage of the mail. This notice should be directed to the post-office nearest where the party resides, unless he is in the habit of receiving his letters at another office, and then notice should be directed there.[1]

When a party, by a memorandum on the paper, indicates a place of residence or business, notice should be sent there.[2] When there are two post-offices in the town where the party resides, notice may be directed to the town generally, unless the holder knows, or has reason to know, that he receives his letters at one of them, in which case notice should be directed there.[3]

If a party has a place of residence at a place where a bill or note is protested, and a place of business somewhere else, it is wrong to send notice by mail to his place of business. Thus, in New York, an indorser was held to be discharged, who had a known residence in the village where the note was protested, and was generally at home three days in the week, when the notice was sent by mail to another city where his place of business was, where he spent four days of the week and received his letters and papers, because there was no evidence that the notice actually reached him in due time, so as to render it equivalent to personal notice.[4]

**§ 129. When parties reside temporarily in a place,** as in the case of members of a legislature or of Congress, while the bodies they attend are in session, it will be sufficient if notice be sent to them there, or left at their place of residence. Thus, in the case of Chouteau *v.* Webster,[5] a notice sent to Mr.

[1] Bank of Geneva *v.* Howlett, 4 Wend. 328; Mercer *v.* Lancaster, 5 Barb. 160.

[2] Peters *v.* Hobbs, 25 Ark. 67; Morris *v.* Husson, 4 Sandf. 93; Baker *v.* Morris, 25 Barb. 138; Farmers' Bank *v.* Battle, 4 Humph. 86.

[3] Morton *v.* Westcott, 8 Cush. 425; Downer *v.* Remer, 21 Wend. 10; Cabot Bank *v.* Russell, 4 Gray, 167.

[4] Van Vechten *v.* Pruyn, 3 Kern. 549.

[5] 6 Met. 1.

Webster while he was a senator, and the Senate was in session, was held sufficient. But after the adjournment of the body, it is insufficient to send notice to the member where the body was in session; it should then be sent to the party's permanent place of residence.[1] And while Congress is in session, it will not be sufficient to deposit notice to the member in the post-office of the Senate or House of Representatives, as it should be served personally by a party in the same place at his residence, or where he might personally be.[2] It has been held that even when the indorser, who was a member of Congress, was known to be in Washington, notice sent to his residence in his district was sufficient.[3]

**§ 130. The place where notice should be sent** is generally the place named in the bill where it was dated; but this is not exclusively and conclusively the proper place. However, in the absence of any other proof that the drawer resided elsewhere, this would be prima facie the proper place to send notice to him. In Alabama, the place where an indorser should receive notice is primarily the place where he lived at the time of the indorsement; but the holder is held to an obligation to make inquiry in case of removal.[4] When the removal was made under circumstances of peculiar notoriety, it was held insufficient to send notice to the prior place of residence.[5]

In the United States, it is strictly held to be the duty of the holder or notary not merely to give notice at the place where the indorser resided when the indorsement was made, if he is not found there, but he should use due diligence to ascertain his place of residence.[6]

Thus, in Wolf *v.* Burgess,[7] it was held that it was negligence in a notary, when an indorser lived out of St. Louis, not to ascertain his address by inquiring from the co-indorsers, who knew. But in a case where the notary inquired from an assistant internal revenue assessor for a party's residence, and sent notice

[1] Bayley *v.* Chubb, 16 Gratt. 284.
[2] Hill *v.* Norvell, 3 McLean, 583.
[3] Marr *v.* Johnston, 9 Yerg. 1.
[4] Tyson *v.* Oliver, 43 Ala. 455; Sprague *v.* Tyson, 44 Ala. 340.
[5] Planters' Bank *v.* Bradford, 4 Humph. 39.
[6] Barnwell *v.* Mitchell, 3 Conn. 101; Lowery *v.* Scott, 24 Wend. 358; Foard *v.* Johnson, 2 Ala. 565; Pierce *v.* Strathers, 27 Penn. St. 249.
[7] 59 Mo. 583. See, also, Gilchrist *v.* Donnell, 53 Mo. 591.

to the place directed, which notice was not received until nine days afterward, it was held that he used due diligence, and the indorser was liable.[1]

In Kentucky, it has been held that a notary public is required to give or send the notices of the dishonor of commercial paper protested by him, to the parties sought to be held liable when he knows their place of residence, and not in the cases in which it might be within his power to ascertain the fact.[2]

In Wood *v.* Corl,[3] the note was dated at Buffalo, and the notary testified that it was reported that the indorser lived there. A notice to the indorser sent to Buffalo was held sufficient. In a late case, where the indorser of a note, payable one year after date, resided at Rochester at the time of the indorsement and ten years prior thereto, and continued to reside there until six months before it fell due, and information was given by the indorser's relatives that she continued to reside there, it was held that notice addressed to Rochester was sufficient.[4]

**§ 131. Time within which notice should be given.**— Formerly, the time within which notice should be given was stated to be within a reasonable time after dishonor;[5] but now there is a definite period fixed, within which notice must be given to a party, or he will be discharged. It is now well established that as soon as the dishonor of the note or bill occurs, notice may be at once given, and a party is not under an obligation to wait until the close of the business day on which the dishonor took place.[6]

Thus, in a late case in Maine it was held that a notice served upon an indorser, upon the last day of grace, after previous demand upon and refusal by the maker on the same day, is not premature.[7]

Notice is not necessary on the very day of dishonor; the

[1] Harger *v.* Demis, 1 Thomp. & C. 460.
[2] Mulholland *v.* Samuels, 8 Bush, 63.
[3] 4 Met. 203.
[4] Requa *v.* Collins, 51 N. Y. 148.
[5] Story on Bills, Sec. 285.
[6] Bank of Alexandria *v.* Swan, 9 Pet. 33; Coleman *v.* Carpenter, 9 Barr, 178; Ex parte Moline, 19 Ves. 216.
[7] King *v.* Crowell, 61 Me. 244.

next day is the proper and the usual time to give the notice. When the holder and the party entitled live in the same place, the holder has the whole of the following day after dishonor to give notice, either at the place of business during business hours, or at one's residence at any time before the hours of rest.[1]

The obligation on a holder, when notice is given through the mail, is to send the notice by the first mail leaving the day after dishonor, provided the mail is not sent off at a very early or inconvenient hour.[2] Some have expressed the opinion that it would be sufficient to send the notice by any mail leaving the day after dishonor. This was the opinion of Kent.[3] "By the next practicable mail" after the day of dishonor is the language very often adopted;[4] Chitty lays down the rule very strictly. He holds it the duty of the holder to give notice by the first mail after the day of dishonor, whether the post sets off from the place where he is, early or late.[5] Story thought this statement of the obligation too strict. He says: "It would be more correct to say that the holder is entitled to one whole day to prepare his notice, and that, therefore, it will be sufficient if he sends it by the next post that goes after twenty hours from the time of the dishonor."[6] The California Civil Code has provided on this head: "When notice of dishonor is given by mail, it must be deposited in the post-office in time for the first mail which closes after noon of the first business day succeeding the dishonor, and which leaves the place where the instrument was dishonored for the place to which the notice should be sent."[7] This gives a definite rule, and a very convenient one.[8]

[1] Adams v. Wright, 15 Wis. 408; Parker v. Gordon, 7 East, 385; Story on Bills, Sec. 290; Jameson v. Swinton, 2 Taunt. 224.

[2] Fullerton v. Bank U. S. 1 Pet. 605; U. S. v. Barker, 12 Wheat. 559; Lawson v. Farmers' Bank, 1 Ohio St. 206; 1 Am. Lead. Cas. 390; Story on Bills, Sec. 238; 1 Parsons N. & B. 511.

[3] 3 Com. 106, Note E.

[4] Haskell v. Boardman, 8 Allen, 40.

[5] Chitty on Bills, 486.

[6] Story on Bills, Sec. 290.

[7] Sec. 3148.

[8] The notice is held in time if sent off during some mail the next day after dishonor. Goodman v. Norton, 17 Me. 381; Howard v. Ives, 1 Hill, 263; Whitwell v. Johnson, 17 Mass. 449; West River Bank v. Taylor, 7 Bosw. 466; 1 Parsons N. & B. 510, 511. Notice of protest for non-payment of a promissory note, personally delivered on the proper day, is not vitiated by being post-dated by

**§ 132. What hour next day is reasonable** for the sending of the notice by mail must depend largely upon the business customs of a place, and no definite rule could very well be fixed as to what may be properly an inconvenient hour. Seven o'clock in the morning has been held not an unreasonably early hour;[1] but sunrise has been held certainly too early.[2] It has been held that where the mail closes at half-past ten A. M. notice should have been sent by it;[3] and where it closed at 10 A. M.;[4] and likewise where it closed at ten minutes past 9 A. M.[5] But in another locality, half-past nine A. M. has been held unreasonably early.[6]

**§ 133. When holidays intervene,** they are counted out, as Christmas day, Sunday, the Fourth of July, or any day of public thanksgiving, or other day upon which a man is prohibited by his religion to transact secular affairs.[7] In these cases notice is given on the next following business day.

"But notice is not invalid because given on the Fourth of July or other holiday; and although notice need not be forwarded until after dishonor, or of its reception, still it is not irregular or improper to do so, if the party chooses, the time being allowed for his convenience. If notice is received on Sunday, it need not be forwarded until the Tuesday following, as he is not bound to open the letter containing it, or to recognize it until Monday; and if received on Saturday, it need not be forwarded until Monday."[8]

**§ 134. A holder has a day to give notice to his predecessor.**—Thus, suppose there are six indorsers; the sixth has

mistake a day later, the mistake being one which could not have misled the indorser. Lennig *v.* Tobey, 4 Penn. L. Journ. 275. But the indorser was discharged when a note was dishonored on the 1st of July, and notice served on the following day was misdated as of the 30th of June. De La Hunt *v.* Higgins, 9 Abb. Pr. 422.

[1] Stephenson *v.* Dickson, 24 Penn. St. 148.

[2] Deminds *v.* Kirkman, 1 Sm. & M. 644.

[3] U. S. *v.* Barker, 4 Wash. C. C. 464.

[4] Haskell *v.* Boardman, 8 Allen, 38.

[5] Lawson *v.* Farmers' Bank, 1 Ohio St. 206.

[6] Burgess *v.* Vreeland, 4 N. J. 71; Hawkes *v.* Salter, 4 Bing. 715.

[7] Chitty on Bills, 488; 1 Pars. N. & B. 515; Cuyler *v.* Stevens, 4 Wend. 566; Lindo *v.* Unsworth, 2 Camp. 602; Martin *v.* Ingersoll, 8 Pick. 1.

[8] Daniel on Neg. Instruments, Sec. 1043.

one day to notify the fifth, he another day to notify the fourth, and so on. But, in practice, it is usual for all the indorsers to be sent notice simultaneously, when the notary makes protest. In illustration of the rule, it was held that an indorser who received notice at eight, or half-past eight in the morning, was not bound to send it to a prior party by mail leaving at twelve o'clock the same day.[1] But it is well to observe that the over-diligence of one party will not avail the tardiness of another. Every one of the intermediate parties, so far as he himself is concerned, must show due diligence, or otherwise he will lose his rights.[2]

**§ 135. Liability of notary in reference to negotiable paper.**—A notary who fails to make a protest when it is required, or who neglects to give proper notice to parties to be charged in case of dishonor, will be unquestionably liable for the loss occasioned thereby. In fact, he stands in precisely the same position as any other agent who may be employed about a particular business, and will be held responsible for his laches and mistakes when loss is occasioned thereby to the party employing him.[3] It is well settled that a bank receiving commercial paper as agent for collection, properly discharges its duty, in case of non-payment, by placing the paper in the hands of a notary public, to be proceeded with in such manner as to charge the parties to it, and secure the rights of the owner; and the bank is not liable for the failure of the notary public to discharge his duty; but in such a case the notary is the sub-agent of the holder, and is responsible directly to him.[4] In Commercial Bank of Kentucky *v.* Varnum,[5] it was decided that where a notary is directed to protest a bill on the wrong day, by a bank who employs him for that purpose, he is not presumed to be a lawyer who is to

[1] Bray *v.* Hadwen, 5 M. & S. 68.

[2] Smith *v.* Roach, 7 B. Mon. 17; American Life Ins. Co. *v.* Emerson, 4 Sm. & M. 177; Carter *v.* Burley, 9 N. H. 558; Mitchell *v.* Cross, 2 R. I. 439; Rowe *v.* Tupper, 13 C. B. 249 (76 Eng. C. R.); Story on Bills, Sec. 294.

[3] Marston *v.* Bank of Mobile, 10 Ala. 284; Allen *v.* Merchants' Bank, 22 Wend. 215; Warren Bank *v.* Parker, 8 Gray, 221.

[4] Bowling *v.* Arthur, 34 Miss. 41; Com. Bank of Manchester *v.* Agricultural Bank, 7 Sm. & M. 592; Dorchester & Milton Bank *v.* New England Bank, 1 Cush. 177.

[5] 49 N. Y. 269.

revise or reverse the decision of his employer as to the character of the bill, and he cannot be held liable for following his instructions.

# CHAPTER VIII.

## NOTARIAL ACTS AS EVIDENCE.

§ 136. Judicial notice taken of notary's seal.
§ 137. How far notarial acts were evidence under common law.
§ 138. A certificate of protest under the common law.
§ 139. Statutory provisions in regard to certificate.
§ 140. What facts the certificate is evidence of.
§ 141. Character of certificate as evidence.
§ 142. Rebutting the certificate.
§ 143. Notarial certificate, when made out of the State.
§ 144. Sufficiency of notarial certificate.
§ 145. Sufficiency as to residence.
§ 146. As to the manner of giving notice.
§ 147. When notice is sent by mail.
§ 148. The certificate must show notice of dishonor.
§ 149. Need not state at whose request notice was given.
§ 150. Date of certificate.
§ 151. Certificate should be under notarial seal.
§ 152. Presumptions in favor of certificate.
§ 153. Parol evidence affecting certificate.
§ 154. Records of a deceased notary as evidence.

CERTIFICATES OF ACKNOWLEDGMENT.

§ 155. Character of evidence.
§ 156. When certificate may be impeached.
§ 157. Can be impeached for fraud or collusion.

**§ 136. Judicial notice is taken of the seal of a notary public,** as an officer recognized by the whole commercial world.[1] This is stated by one of our best authorities on the law of evidence. It is frequently said, in another manner, that the seal of a notary public proves itself. But what does this mean? How far is this true? The statement is somewhat broad and general, and needs more exact and careful exposition. When we say that the seal of a notary proves itself, we mean that no further testimony is required to be given to the Court before the judicial mind can recognize it as the seal of a notary. Its very production is all that is required, according to the common law.

[1] Greenlf. on Ev. Sec. 5.

Whereas, in the case of the seal of some private officer or person, it is necessary to show that it was the seal of such person or officer. Thus, suppose an instrument be offered with the seal of a corporation to it, necessary to give it validity. It will be necessary to prove, before the instrument can be admitted in evidence, that the seal *is* the proper seal of the corporation. But when an instrument is produced which is required to have a notarial seal to give it validity, the seal affixed as that of a notary will be accepted without proof by the Court, or without any further testimony that such is properly the seal it purports to be. A case before Lord Eldon well illustrates this particular point. In Hutcheon *v.* Mannington,[1] a certain person, as a magistrate, joined with a notary public, to certify that certain writings, executed in a foreign country, were true copies. Lord Eldon observed that a notary public by the law of nations has credit everywhere, and that he would therefore give credit to him, but that it was necessary to prove that the other person was a magistrate.

In Brown *v.* Philadelphia Bank,[2] Chief Justice Tilghman uses this language: "Public convenience requires that a certificate, under a seal of this kind, should be prima facie evidence, without proving that the person who used it and signed the certificate was a notary commissioned by the governor. It ought to be presumed, till the contrary be proved, that no man would dare to assume the office without proper authority." It must be remembered that this is a statement of a rule of the common law, and in many places may be otherwise by statute. But it will be found that in all civilized countries, by the commercial law, the seal of a notary, affixed to a protest in a foreign State, is accepted as authentic, without any other proof or verification.[3]

[1] 6 Vesey, 823.

[2] 6 S. & R. 484. See Townsley *v.* Sumrall, 2 Pet. 178; Story on Bills, Sec. 277; Porter *v.* Judson, 1 Gray, 175; Wright *v.* Barnard; 2 Esp. 700. The sealed protest of a foreign notary made abroad proves itself without showing by whom it was made, and is evidence of the fact of protest. Lloyd *v.* McGarr, 3 Barr, 474.

So, in Louisiana, it is held that protests of foreign bills by foreign notaries are received in aid of commerce, to establish the facts of presentment, demand, and non-payment, and this without proof of their signatures and official capacities. Shorr *v.* Woodlief, 23 La. An. 473.

[3] In Donegan *v.* Wood, 49 Ala. 342, the Court refused to recognize as valid the official acts of a notary public in making protest in New Orleans, in February, 1862, who was appointed by the Confederate States.

In regard to certain duties devolving on notaries by statute, as, for instance, the taking of depositions, the same rule is not universal. For while in some places the signature of a notary and his seal would be accepted as authentic, without further proof that he was such in fact, in other places, as will be seen by a reference to the chapter on depositions, it is necessary to have an authentication of his official character from some public officer or Court. The practice on this point varies throughout our States.

**§ 137. How far notarial acts were evidence under common law.**—The protest of a foreign bill of exchange by a notary was accepted by the common law as proof of the fact of dishonor. This rule was sanctioned by the mercantile law as one of great convenience, obviating the necessity of calling witnesses from a great distance to prove the fact of dishonor; and the certificate of the notary was received in place of the oral evidence. This rule only had application to foreign bills. Whenever the dishonor of inland bills or notes had to be proved, the notarial protest alone would not be received as sufficient evidence—the notary himself, or some other witness who knew the facts, must be called upon to give evidence. So, Story, J., uses this language, in Townsley *v.* Sumrall:[1] "But where parties reside in the same kingdom or country, there is not the same necessity for giving entire verity and credit to the notarial protest. The parties may produce the witnesses upon the stand, or compel them to give their depositions. And accordingly, even in cases of foreign bills, drawn upon and protested in another country, if the protest has been made in the country where the suit is brought, Courts of Justice, sitting under the common law, require that the notary himself should be produced, if within the reach of process, and his certificate is not *per se* evidence. This was so held by Lord Ellenborough in Chesmer *v.* Noyes."[2] Story, in this case, held that the United States were foreign to one another in respect to bills of exchange.[3] Under the common law, the

[1] 2 Pet. 179.

[2] 2 Camp. 129.

[3] In Holliday *v.* McDougall, 20 Wend. 81, the same point is decided by Cowen, J., who cites Townsley *v.* Sumrall, Supra; Cape Fear Bank *v.* Steinmetz, 1 Hill,

protest was only evidence as to presentment and dishonor; and no statement contained therein, as to notice given an indorser, would be accepted as evidence of notice to the indorser.[1]

**§ 138. A certificate of protest under the common law** is evidence of a demand and refusal, but no more. Hence, in an action upon a foreign bill, the protest is competent evidence to prove presentment of the bill to the acceptor, and non-payment.[2] But a notarial protest which states merely that the notary "presented the same at the office of A & B," the makers, "and was refused payment," is not sufficient, and it is not admissible in evidence in an action against an indorser.[3] The Court, in this case, say: "The matter to be proved was, that the note had been duly protested for non-payment, that is, the dishonor of the note. This main fact would consist of three elements: a presentment to the makers for payment, a demand of payment, and a refusal of payment; all of which the notarial protest must show, otherwise it will contain no evidence which is competent to go to the jury on the main fact to be proved.

In Bank of Rochester *v.* Gray,[4] it is held that the admission of a notarial certificate of protest, as evidence, depends on the *lex fori*, and it is not admissible by itself unless it be sealed; and it is there also held that, as it is no part of the common-law duty of a notary to give notice, the certificate of a foreign notary is no evidence that he did so.

Sometimes the record of a deceased notary has been received as *secondary* evidence, to show the fact of notice having been given when his certificate, if he were living, would not be com-

44; Nicholls *v.* Webb, 8 Wheat. 331. See, further, Chitty on Bills, 362; Kirksey *v.* Bates, 7 Porter, 529; Hatfield *v.* Perry, 4 Harr. (Del.) 463; Bond *v.* Bragg, 17 Ill. 69; Carter *v.* Burley, 9 N. H. 558.

[1] Rives *v.* Parmley, 18 Ala. 256; Coster *v.* Thomason, 19 Id. 721; Sullivan *v.* Deadman, 19 Ark. 484; Union Bank *v.* Humphreys, 48 Me. 172; Schoneman *v.* Fegley, 7 Penn. St. 433; Coleman *v.* Smith, 26 Id. 255.

[2] Musson *v.* Lake, 4 How. (U. S.) 273; Green *v.* Jackson, 15 Me. 136; Warren *v.* Warren, 16 Id. 259; Pattee *v.* Crillis, 53 Id. 410; Moore *v.* Missouri Bank, 6 Mo. 379; Grafton Bank *v.* Moore, 14 N. H. 142; Estep *v.* Cecil, 6 Ohio St. 536; Williams *v.* Turner, 2 Bay (S. C.) 411; Bryden *v.* Taylor, 2 Har. & J. 399; Brittain *v.* Bank, 5 Watts & S. 87.

[3] Nave *v.* Richardson, 36 Mo. 130; S. P. Otsego Co. Bank *v.* Warren, 18 Barb. 290.

[4] 2 Hill, 227. See Ross *v.* Bedell, 5 Duer, 462.

petent to prove this fact. Thus, Story, J., says, in Nicholls *v.* Webb,[1] of an entry made in the register of a deceased notary, in regard to the protest of a promissory note, which did not require a protest according to the law merchant: "We think it a safe principle that memorandums made by a person in the ordinary course of his business, of acts or matters which his duty in such business requires him to do for others, in case of his death, are admissible evidence of the acts and matters so done." "*A fortiori*, we think the acts of a public officer, like a notary public, admissible, although they may not be strictly official, if they are according to the customary business of his office, since he acts as a sworn officer, and is clothed with public authority and consequence." So, on this principle, it was decided, in Massachusetts, in Porter *v.* Judson,[2] that the protest of a promissory note, duly authenticated by the signature and official seal of a notary public, and found among his papers after his death, is competent secondary evidence of the acts of the notary, stated therein, respecting presentment, demand, and refusal.[3]

**§ 139. Statutory provisions in regard to certificate.**— In nearly all of our States there have been enacted statutes giving greater credit and force to a notarial certificate in regard to the protest of negotiable paper. While, under the common law, a protest was only necessary in the case of foreign bills, and was only received as evidence in actions upon such, now, under statutory provisions, protests may be made of inland bills and promissory notes, and the certificate of the notary as to such protest, and the notice given, is accepted as prima facie evidence of such facts, without the necessity of calling the notary as a witness. This has been done in aid of mercantile usage and

[1] 8 Wheat. 326.

[2] 1 Gray, 175. In Hart *v.* Wilson, 2 Wend. 513, a memorandum of protest on the back of a note by a deceased notary was admitted in evidence.

[3] The same has been held, in England, in Poole *v.* Decas, 1 Bing. 649, Chief Justice Tindal holding: "We think it admissible, on the ground that it was an entry made at the time of the transaction, and *made in the usual course* and routine of business by a person who had no interest to misstate what had occurred." The admission of records of deceased notaries, under statutory provisions, will be considered in a subsequent section.

convenience, though some of our States still adhere to the common-law rules, previously stated.[1]

In Kansas, the statute provides: "A notarial protest shall be evidence of a demand and refusal to pay a bond, promissory note, or bill of exchange, at the time and in the manner stated in such protest, until the contrary is shown."[2] This, it will be seen, somewhat enlarges the field of the protest, extending it to inland bills, bonds, and to promissory notes, but nothing is said about it being evidence of the fact of notice if recited in the protest. This point came under examination in a late case in that State where a promissory note had been protested for non-payment, and a statement was made in the protest that due notice was given to the indorser, setting forth how given. The Court decided that under the statute this certificate could not be received as evidence of such notice.[3]

The language of the Missouri statute is almost the same. It says: "A notarial protest is evidence of a demand and refusal to pay a bill of exchange or negotiable promissory note, at the time and in the manner stated in such protest."[4] And it would follow that, under the construction given to the Kansas statute, a recital of notice having been given would not be received as competent evidence by the certificate of the notary.

[1] The following States still adopt the common-law rule as to notice: Delaware, Florida, Kansas, Massachusetts, Missouri, and Rhode Island. In Mississippi, since Act of April 5th, 1872, the protest is required to state whether demand was made, of whom, when, and where, whether the notary presented such bill or note, whether notices were given, to whom and in what manner, where the same was mailed, and when and to whom directed, and every other fact touching the same. Sec. 9. In New Jersy, since 1862, (Nixon's Dig. p. 773) the certificate of a notary, as to protest and notice, shall be received as prima facie evidence, but a party may contradict it by appending notice to his plea.

In Pennsylvania, it is provided (Purdon's Dig. p. 759) "that the official acts, protests, and attestations of all notaries public, certified according to law, under their respective hands and seals of office, in respect to the dishonor of all bills and promissory notes, and of office to the drawers, acceptors, or indorsers thereof, may be received and read in evidence as proof of the facts therein stated in all suits pending, or hereafter to be brought: *provided*, that any party may be permitted to contradict by other evidence any such certificate." In Jenks *v.* Doylestown Bank, 4 Watts & S. 505, it was held that the notary's protest of a promissory note is prima facie evidence of the fact of notice when recited in it.

[2] Gen. Stat. 117, Sec. 18.

[3] Curtis *v.* Buckley, 14 Kan. 450.

[4] 1 Wag. Stat. 218, Sec. 20.

**§ 140. What facts the certificate is evidence of.**—It must be understood that the notary's certificate is not evidence of every fact he may choose to state in it. It is manifest that he might state many irrelevant matters which cannot have any connection whatever with the duty he is called upon to discharge; which could not therefore be received in evidence under his certificate. And it must be borne in mind that evidence offered in this manner, without cross-examination, *ex parte* as it were, is an innovation on the rules of the common law, and therefore the certificate can only be received as evidence to those facts which the statute provides. The Courts are therefore strict in confining the certificate of the notary to the precise facts required by the statute, and no more, nor no less. So, when the protest of a notary public stated that notice was given "to the agent" of a party of the protest of his paper, this is not sufficient evidence of such agency: the agency must be proved *aliunde* before the protest can be received as evidence of notice.[1] And a statement, in a protest of a bill for non-acceptance, that the reason given by the drawee for non-acceptance was that he had no effects of the drawer, is no evidence of the want of effects.[2] Where a certificate states that the notice was mailed to the indorser's address at a certain place, it will not be presumed that the indorser resided in that place.[3] So a certificate of the notary that, according to his best information, upon diligent inquiry, the indorser lived in New York, and that he mailed a notice to him in that city, is of no effect to prove a proper notice upon proof that when the plaintiff took the note he was informed that the indorser lived on Long Island, where in fact he had lived for twenty years.[4] If a notary certifies that what he did was done at the request of a particular bank, it is of no importance; for it may be fairly inferred that he received the bill from that bank, and that they, having possession of it, were duly authorized to employ the attorney.[5]

[1] O'Connell *v.* Walker, 1 Porter, 263; Castles *v.* McMath, 1 Ala. 326; S. P. Drumm *v.* Bradfute, 18 La. An. 680.

[2] Dumont *v.* Pope, 7 Blackf. 367; Dakin *v.* Graves, 48 N. H. 45.

[3] Bradshaw *v.* Hedge, 10 Iowa, 402.

[4] Randall *v.* Smith, 34 Barb. 452.

[5] Burbank *v.* Beach, 15 Barb. 326. In Bennett *v.* Young, 18 Penn. St. 261, a

The Civil Code of California gives a great deal of scope to the notarial protest. It provides, Sec. 3227, that it shall state "presentment, and the manner in which it was made; the presence or absence of the drawee or acceptor, as the case may be; the refusal to accept or to pay, or the inability of the drawee to give a binding acceptance; and, in case of refusal, the reason assigned, if any; and, finally, protest against all the parties to be charged."

**§ 141. Character of certificate as evidence.**—The statutes of our States give to a notary's certificate of the protest of commercial paper, and the notice served, the character of presumptive or prima facie evidence of the facts of such protest and notice.[1] Some of the statutes provide unnecessarily that such evidence may be contradicted; but of course, from the nature of the evidence, this must be assumed.[2] Thus, in an action on a promissory note against an indorser, the protest and certificate of notice of protest are admissible in evidence, although no protest or notice of protest is alleged in the petition. The protest and certificate of notice of protest are proper evidence under allegations showing demand and refusal of payment, and that the defendant had due notice.[3] The certificate is evidence, although the notary has forgotten the facts contained in the certificate.[4]

The credit given to the notary's certificate, under the statutes,

notary certified that he had "made diligent search and inquiry" for the drawers. The Court disapproved of this mode of stating the facts, it being in the nature of a conclusion rather than any clear statement of what he had actually done.

[1] Prima facie evidence is defined to be, in law, that which is sufficient to establish a fact, unless rebutted: Bouvier's Law Dictionary. The Code of Procedure of California, Sec. 1833, defines it to be, that which suffices for the proof of a particular fact, until contradicted and overcome by other evidence.

[2] Booker *v.* Lowry, 2 Ala. 399; Rives *v.* Parmeley, 18 Id. 256; McFarland *v.* Pico, 8 Cal. 627; Dickerson *v.* Turner, 12 Ind. 223; Sather *v.* Rogers, 12 Iowa, 231; Barker *v.* Fullerton, 11 La. An. 25; Nailor *v.* Bowie, 3 Md. 251; Kern *v.* Von Phul, 7 Minn. 426; Simpson *v.* White, 40 N. H. 540; Gawtry *v.* Boane, 48 Barb. 148; Gordon *v.* Price, 10 Ired. 385; Baumgardner *v.* Reeves, 35 Penn. St. 250; Worley *v.* Waldran, 3 Sneed, 548; Nelson *v.* Fotherall, 7 Leigh, 179; Central Bank *v.* St. Johns, 17 Wis. 157; Span *v.* Baltzall, 1 Fla. 301; Field *v.* Thornton, 1 Ga. 306; Sims *v.* Handley, 1 How. (Miss.) 1; Smith *v.* McMannis, 7 Yerg. 483.

[3] Bank of Kentucky *v.* Goodale, 20 La. An. 50.

[4] Sherer *v.* Easton Bank, 33 Penn. St. 134.

is well stated, and the departure from the former practice shown in Layman *v.* Brown,[1] in Ohio. There the Court say: "The object of this provision undoubtedly was to make the officer's certificate of all his official acts, performed at the time of the protest, evidence in any action upon the bill or note protested. Prior to the statute, the act of a notary in the presentment of a note, and giving notice to the indorser, was of no more validity than that of a private person. It was subject to the same rule of construction, and must have been proved in the same manner. The rule was so strictly applied that the notarial fee could not be charged against the debtor; and although the practice prevailed in all the commercial cities of the Union to employ a notary to present dishonored notes, and to notify the indorsers if payment should be refused, it was never decreed that the practice changed the general rule of law—it was simply an arrangement made for the convenience of the holder, and principally resorted to when the note was held by a bank, by which, in effect, the notary was substituted for an agent of the holder. Such was the law, as held by the Courts of all the States, as well as those of England. The admission of the protest as testimony was confined solely to bills of exchange, and then merely to entitle the holder to recover damages. And yet, in Scotland, as well as in all Continental Europe, there was no distinction made between bills and notes—the act of the notary was held to be good evidence of the facts necessary to be proved in both cases."[2]

[1] 1 Disney, 75.

[2] Story on Prom. Notes, Secs. 274, 279, 297; Nicholls *v.* Webb, 8 Wheat. 326.

The provisions in our statutes which admit the certificate of a notary as evidence are very similar throughout. Thus, in California, Political Code, Sec. 795: "The protest of a notary, under his hand and official seal, of a bill of exchange or promissory note, for non-acceptance or non-payment, stating the presentment for acceptance or payment, and the non-acceptance or non-payment thereof, the service of notice on any or all of the parties to such bill of exchange or promissory note, and specifying the mode of giving such notice, and the reputed place of residence of the party to such bill of exchange or promissory note, and of the party to whom the same was given, and the post-office nearest thereto, is prima facie evidence of the facts contained therein." The provision in New York is: "Any note or memorandum made by a notary public, in his own handwriting, or signed by him at the foot of any protest, or in his regular register of official acts, is presumptive evidence of the fact of any notice of non-acceptance or non-payment having been sent or delivered at the time and in the manner stated in such note or memorandum." 2 R. S. 284, Sec. 47. In Mis-

**§ 142. Rebutting the certificate.**—Some States provide a specific mode for a rebuttal of the certificate as evidence, and then the party offering it is obliged to prove the facts, as he would have to do under the common law. The statute of New York, passed in 1833, enacted: "In all actions at law, the certificate of a notary, under seal of office, of the presentment of any note or bill for acceptance, or of any protest of such note or bill, and of the service of notice thereof on any or all of the parties, specifying the mode of giving such notice, and the reputed place of residence of the party to whom the same was given, and the post-office nearest thereto, to be presumptive evidence of the facts contained in such certificate: but not when the defendant shall annex to his plea an affidavit, denying having received notice of non-acceptance or of non-payment of such note or bill."[1] The Michigan statute is somewhat similar, reading: "In all the Courts of this State, the certificate of a notary public, under his hand and seal of office, of official acts done by him as such notary, shall be received as presumptive evidence of the facts contained in such certificate; but such certificate

sissippi, the certificate is not evidence without the affidavit of the notary. By the Act of April 5th, 1872, it is provided: "That the record of the notary protesting any bill, or note, or other instrument, or a copy thereof, *verified by the affidavit of such notary*, taken before a justice of the peace, shall be conclusive evidence of the fact of the protest, and prima facie evidence of all other facts touching the dishonor of the said bill or note; such copy shall be competent evidence in all the Courts of this State, including the Courts of the county in which the notary protesting the bill or note resides." The certificate is not evidence unless verified by oath: Dorsey *v.* Merritt, 7 Miss. 390; but the oath need not be made at the time of making up the record. Fleming *v.* Fulton, 7 Miss. 473.

[1] Laws 1833, p. 394, Chap. 271, Sec. 8.

Under this, it was held that a notarial certificate of protest and notice is competent evidence, notwithstanding a denial of notice of protest in a verified answer. Such verification cannot be received as a substitute for the affidavit required by the statute. Arnold *v.* Rock, 5 Duer, 207; Gawtry *v.* Doane, 48 Barb. 143; Lansing *v.* Coley, 13 Abb. Pr. 272. An affidavit denying "knowledge, recollection, or belief" of having received notice of protest, is sufficient to exclude the notarial certificate. Barker *v.* Cassidy, 16 Barb. 177. See Pierson *v.* Boyd, 2 Duer, 33. This Act of 1833 has no application to the case of a certificate of a notary of this State to the presentment of a note drawn payable at a place in another State. Dutchess Co. Bank *v.* Ibbotson, 5 Den. 110; Kirtland *v.* Wanzer, 2 Duer, 278. It applies only to notaries of the State. Bank of Rochester *v.* Gray, 2 Hill, 227. The defendant may contradict the presumption arising from the certificate, by showing that it is untrue. Seneca Co. Bank *v.* Neass, 3 N. Y. 442.

shall not be evidence of notice of non-acceptance or non-payment in any case in which a defendant shall annex to his plea an affidavit, denying the fact of having received such notice."[1]

**§ 143. Notarial certificate, when made out of State.**— It has been held that the statutes giving to the notarial certificate the character of prima facie evidence of the protest and notice of protest have no application to the certificates made out of the State; and such certificates, given by notaries in other States, can only be admitted in evidence under enabling statutes, which are now found in many of our States.[2] Thus, under the Pennsylvania Act of 1854, the certificate of a notary in another State of the non-payment of a bill or note is admissible in evidence in an action upon it, and it is not necessary that the certificate should appear to have been a transcript from some record or register of what took place at the time of sending notice.[3] So in Connecticut, under the statute making protests of promissory notes protested without the State prima facie evidence of the facts therein contained, such a protest, in which the magistrate has certified that on the day of the protest a due notice thereof was put into the post-office, directed to the indorser at his place of residence, is admissible as evidence that such notice was sent.[4] And it has been held, in Indiana, that an instrument of writing purporting to be a protest of a note with a certificate of notice to the indorser, by a notary public in New York, is admissible evidence for the plaintiff, in a suit on said note, under the statute, without proof of its execution.[5]

In a late case in New York, the Court had under consideration the requisites of such a certificate from another State. Under the law of New York of 1865,[6] it was enacted that presentment of notes and notice of protest may be made "according to the laws of such other State, etc. And in any action in any of the Courts of this State, such proof of such presentment

[1] Comp. Laws, p. 262, Sec. 603.

[2] White *v.* Englehard, 10 Miss. 38; Dutchess Co. Bank *v.* Ibbotson, 5 Den. 110; Schoneman *v.* Fegley, 7 Penn. St. 433; Coleman *v.* Smith, 26 Id. 255; Sumner *v.* Bowen, 2 Wis. 524.

[3] Starr *v.* Sanford, 45 Penn. St. 193.

[4] Union Bank *v.* Middlebrook, 33 Conn. 95.

[5] Shanklin *v.* Cooper, 8 Blackf. 41; S. P. Turner *v.* Rogers, 8 Ind. 139.

[6] Laws of 1865, Chap. 309.

and notice thereof may be made as is authorized and required by such laws. And on such proof being made, the note shall be deemed to have been duly and sufficiently presented and protested, and notice of all thereof duly given."

The certificate of a notary of Pennsylvania, wherein he certified that he had made due presentment, etc., and made protest, stating "of all of which I duly notified the indorsers," was introduced in evidence. The Court decided that this certificate was incomplete, and could not be admitted under the above statute to prove due notice to the indorsers; for the reason that there was no evidence offered that this certificate would be sufficient under the laws of Pennsylvania, and, in the absence of such evidence, the certificate must state definitely how and in what manner notice was given, either that it was personal, according to the common law, or by mail, according to statute.[1] The Court say, in giving the decision: "The act allows presentment and notice to be made and given according to the laws of such other State, and proof thereof to be made as is authorized and required by such laws. On such proof, *i. e.*, that the presentment and notice was according to the laws of such State, being made, it shall be held to have been duly done, and such certificate would be enough."

**§ 144. Sufficiency of the notarial certificate.**—A protest of a notary is prima facie evidence of the truth of its statements, and when exclusively relied on to prove the necessary facts, must contain sufficient averments that everything requisite has been done to authorize the demand upon the indorser.[2] The inquiry will now be made as to what requisite averments the certificate must contain, so as to hold an indorser liable when the certificate is offered to prove notice of protest.

**§ 145. Sufficiency as to residence.**—As the statutes give to the certificate the character of prima facie evidence of the facts therein stated, it would follow that a statement by the

[1] Lawson *v.* Pinckney, 40 N. Y. Superior Ct. 187. Decided, Dec. 1875.

[2] People's Bank *v.* Brooke, 31 Md. 7. The protest of a notary public is admissible in evidence, however insufficiently or defectively the facts may be stated with respect to demand and notice. The question of the sufficiency arises afterward. Hastings *v.* Barrington, 4 Whart. 486.

notary that he had given notice to an indorser at a certain place is prima facie evidence that that is his residence. The burden will be upon the indorser, when sued, to show that it was not his residence or post-office address.[1] In a late case in Iowa, Fuller v. Dingman,[2] the notary's certificate was as follows: "Be it known, that on the date hereof, I, W. S. Kenworthy, notary public for the County of Mahaska, State of Iowa, duly commissioned and qualified, residing in the city of Oskaloosa, in said State, at the request of Lindley, cashier, the holder of the original note, which is hereunto attached, presented the same and demanded payment thereon, which was refused. Whereupon, I, the said notary, at the request aforesaid, have protested, and do protest, against the maker and indorsers of said note. * * * And I do certify that, on the day of the date of this protest, I notified the maker and indorsers of the hereunto attached note, to wit: Lawrence Dingman, in person, and Craig & Alexander, Fuller & Warren, and H. E. Lowe, cashier, of the within protest, and which I, on the said day, mailed to them, the said Craig & Alexander, and H. E. Lowe, assistant cashier. The first addressed, Oskaloosa, Iowa, and Fuller & Warren, and H. E. Lowe, Chicago, Illinois, and to Lawrence Dingman, Oskaloosa, Iowa. In testimony whereof," etc. It was held that this was sufficient as evidence that the places named were the respective residences of the parties.

In some States—in fact, as a general rule—it is required that when certificates are sent by mail it shall be stated where the notices were sent.[3] But in New York, since the law of 1835, the certificate need not specify the party's reputed place of residence, and the post-office nearest to it.[4] In a case in Indiana, it is held that where a notary states in the protest that he notified the indorsers by addressing notices to them at a place named, proof is requisite that they resided at that place.[5] This is not in agreement with other authorities.

[1] Walmsley v. Rivers, 34 Iowa, 463; Bell v. Lent, 24 Wend. 230; Bell v. Hagerstown Bank, 7 Gill. 216; Bank of Columbia v. McGruder, 6 H. & J. 172.

[2] 41 Iowa, 506.

[3] Curry v. Bank of Mobile, 8 Port. 360.

[4] Ketchum v. Barber, 4 Hill, 224. So in Georgia. Walker v. Bank of Augusta, 3 Ga. 486.

[5] Turner v. Rogers, 8 Ind. 139; S. P. Bank of Mobile v. King, 9 Ala. 279.

**§ 146. As to the manner of giving notice.**—When no mode of giving the notice is stated in the notarial certificate, it is deemed to be personal. Thus, in Ticonic Bank *v.* Stackpole,[1] the notary merely certified: "And on the same day I duly notified James Stackpole, Esq., indorser of said note, of said nonpayment." It was objected, in this case, that this certificate was insufficient, as it was a mere conclusion by the notary as to what "due" notice was. The Court held the certificate sufficient as evidence of notice, saying: "In the absence of any qualification, it must be regarded as verbal, and that, as the defendant is a resident of the town where the note is payable, is sufficient. But it is seldom a notarial certificate is given in this manner; the usual and the proper course is to indicate what means were taken to notify the indorser, whether it was by a written notice handed to him, or mailed to him, as the statute requires."

So, a notary's certificate that he "gave written notice to the indorser" is equivalent to "put a written notice in the indorser's hands," and is therefore good.[2] Where a notary, in his certificate of protest, stated that he had delivered a written notice of protest "to C, and left the same at his office," it was held that C might show that, at the time the notice was given, he had no office at the place mentioned, and thereby rebut the presumption of the correctness of the fact stated by the notary.[3]

In Union Bank *v.* Humphreys,[4] the certificate stated merely that the notary "made notices to all the indorsers, which he caused to be left at their dwelling-houses." It was held that the certificate could not be received as evidence. The Court say: "What the notices contained, and whether sufficient or not to charge an indorser, is left entirely to conjecture. The plaintiffs neither asked for leave for the notary to amend his protest, nor offered to prove that the notices sent contained the proof of the

[1] 41 Me. 321. Where a protest is defective in not stating how notice was given to an indorser, the necessary facts may be supplied by evidence *aliunde*. Bradley *v.* Davis, 26 Me. 45.

[2] O'Neil *v.* Dickson, 11 Ind. 253. A certificate stating that notice was left at the indorser's desk in the custom-house, with a person in charge, he being absent, is admissible, and is prima facie evidence of due service. Bank of Commonwealth *v.* Mudgett, 44 N. Y. 514.

[3] Caruthers *v.* Harbert, 5 Coldw. 362.

[4] 48 Me. 172.

dishonor of the note." It is not easy to distinguish this case from the case of Ticonic Bank *v.* Stackpole, Supra. On an examination, however, it will appear that in the former case there were facts in the protest showing the dishonor of the note, sufficient for the Court to assume the fact of dishonor, implying a presentment, demand, and refusal; whereas, it appears in the latter case there was nothing showing notice of the fact of dishonor. The notice was not produced in the latter case, and no inference as to its contents could be raised.

**§ 147. When notice is sent by the mail** the certificate must show the fact clearly in order to appear it was proper under the statute to send notices in that mode. A notarial certificate, stating that notice of protest was served, etc., by putting the same in the post-office, directed, etc., is a sufficient compliance with the statute in New York, though it do not expressly state by whom the service was made.[1] Proof that the notice was placed in the post-office, at nine o'clock in the forenoon of the day on which it should be sent, without showing that it was in season to be carried by the mail of that day, is not sufficient.[2] And in the same case it was decided that when the indorser resides in a different State from that in which the demand on the acceptor was made, and when there is a town of the same name in at least two States, the direction of the notice should not only name the town in which the drawer resides, but also the State. The protest of a notary public of another State, wherein he states that he sent a notice of the dishonor of a bill to the drawer on the next day after a demand and refusal, "and by the first practicable mail thereafter," is competent evidence to prove the fact thus stated.[3] Where a notary's certificate shows that he has mailed notice of protest, a prepayment of postage will be presumed.[4]

**§ 148. The certificate must show notice of dishonor,** or it cannot be admitted in evidence. The notice given must con-

[1] Barber *v.* Ketchum, 7 Hill, 444; S. C. 4 Hill, 224.

[2] Beckwith *v.* Smith, 22 Me. 125.

[3] Beckwith *v.* St. Croix Man. Co. 23 Me. 284. See Housatonic Bank *v.* Laflin, 5 Cush. 546.

[4] Brooks *v.* Day, 11 Iowa, 46.

vey such fact clearly and unequivocally to the party. Thus, a protest of a note payable at a bank, stating that written notices had been addressed to the indorsers, "informing each of them that he was held liable for the payment of the said note, without stating that the note was due and unpaid, is insufficient to charge the indorsers."[1] The notarial certificate should show affirmatively a presentation to the person upon whom the demand of payment should properly be made.[2] A certificate stating that the notary gave "notice of the non-payment of the bill" must be understood to mean that the notice was of non-payment on due presentment and demand, as stated in the certificate of protest, and is sufficient.[3] It must show a presentment for payment by the notary himself.[4]

**§ 149. The certificate need not state at whose request notice was given,** for it will be presumed it was done at the instance of the holder.[5] It will also be presumed the notary had the draft in his possession at the time he demanded payment.[6]

**§ 150. Date of certificate.**—Where a notary keeps a register, and notices therein his acts in protesting and giving notice, he can make up his certificate at any time thereafter from such entry, and it will be received in evidence as if made at the time of the occurrence of the acts.[7]

In Austin *v.* Wilson,[8] it was held that it was not essential that the entire record of the notary should be made at the very moment of the transaction, but it is sufficient if done within a few days, in the ordinary course of business. But in a case

[1] Farmers' Bank *v.* Bowie, 4 Md. 290.

[2] Duckert *v.* Von Lilienthal, 11 Wis. 56; Otsego Co. Bank *v.* Warren, 18 Barb. 290.

[3] Burbank *v.* Beach, 15 Barb. 326; Seneca Co. Bank *v.* Neass, 3 N. Y. 442.

[4] Warnick *v.* Crane, 4 Den. 460; Hunt *v.* Maybee, 7 N. Y. 266; Bank of Kentucky *v.* Garey, 6 B. Mon. 626; except where deputies are authorized to make demand as in Louisiana; see Lee *v.* Buford, 4 Metc. Ky. 7; Chew *v.* Reed, 19 Miss. 182.

[5] Duckert *v.* Von Lilienthal, 11 Wis. 56; Burbank *v.* Beach, 15 Barb. 326.

[6] Bank of Louisiana *v.* Satterfield, 14 La. An. 80; Bank of Vergennes *v.* Cameron, 7 Barb. 143.

[7] Chatham Bank *v.* Allison, 15 Iowa, 357; Brandon *v.* Loftus, 4 How. Miss. 127.

[8] 24 Vt. 630.

where the notary made protest and notified indorsers in March, 1839, and in October, 1845, more than four years and a half thereafter, made out his certificate, the Court refused to admit the certificate in evidence.[1] It is not easy to see on what ground the certificate was rejected in this case; for if the notary kept a record of his official acts, such record ought to enable him at any time thereafter to make out his certificate. Where the statute required the certificate to be "either in or on the protest," and a certificate was made out more than a year afterward, and not on the protest, it was held inadmissible in evidence.[2]

**§ 151. The certificate should be under the notarial seal** as a general rule, invariably so if it be a foreign bill of exchange. In some places, it has been held that the certificate, if signed by the notary, need not be under his seal when the certificate is offered in evidence to show notice given of the protest of a promissory note.

Thus, in Palmer *v.* Whitney,[3] the certificate of notice of protest of a promissory note did not bear the official seal of the notary, though the statute required that all notarial acts be attested by a seal. The objection was therefore raised that the certificate was not admissible on this account; but the Court held that as the notary when he gives notice of protest does not act officially, but as the agent for the holder, his mere signature to the notice, without attestation by his seal of office, is sufficient. It seems to me that this decision is very doubtful, and would hardly be accepted as authority elsewhere. Thus, in Iowa, it is held that a notary's protest is inadmissible in evidence unless his seal be affixed, though it is allowable for him to affix his seal when this objection is made;[4] but it is not necessary that the certificate should formally refer to the seal.[5]

In a case in New York, the question was raised whether the usual certificate of notice when written beneath the protest, which was under seal, must also have a seal, and it was decided

[1] Boggs *v.* Bank of Mobile, 10 Ala. 970.
[2] Winchester *v.* Winchester, 4 Humph. 51.
[3] 21 Ind. 58.
[4] Rendskoff *v.* Malone, 9 Iowa, 540.
[5] Jones *v.* Berryhill, 25 Iowa, 289.

that it was unnecessary: so long as the seal appeared on the instrument, it was immaterial where it was appended.[1]

**§ 152. Presumptions in favor of certificate.**—As the certificate is made evidence of certain facts by statute, it must clearly state these and no more; it must be strictly construed with reference to these facts, and cannot be aided by presumption. The Courts will, however, in the absence of evidence to the contrary, presume in favor of the notary discharging his duties properly and regularly: as when it is not clear from the certificate at what time a presentment was made, it will be presumed it was during regular business hours, and that the notary had the draft in his possession.[2]

So it is held that every intendment is to be in favor of the performance of his duty by a notary who certifies to the protest of negotiable paper for non-payment.[3]

Where the certificate of a notary stated that he exhibited the note at the place of business of the promisors, and, demanding payment thereof, was answered by the person in charge that the promisors had left no funds there to pay the note, and that, said note remaining unpaid, he duly notified the indorsers by written notices, sent them by mail, having been requested so to do by the bank holding the notes, the time limited, and grace having expired—it was held that it might reasonably be inferred that he stated these facts in the written notices.[4]

**§ 153. Parol evidence affecting certificate.**—It must often be a practical inquiry as to how far a notary can by oral evidence affect or control his certificate of protest and notice. This much is certain, that a notary public who has made a protest of a promissory note, and given due notice thereof to the indorser, cannot be permitted, by oral evidence, to contradict or vary what he has certified to, so as to weaken the certificate.[5] But he may, by oral evidence, explain his certificate so as to

[1] Olcott *v.* Tioga R. R. Co. 27 N. Y. 546.

[2] De Wolf *v.* Murray, 2 Sandf. 166; Bank of Louisiana *v.* Satterfield, 14 La. An. 80; Union Bank *v.* Foulkes, 2 Sneed, 555.

[3] McAndrew *v.* Radway, 34 N. Y. 511.

[4] Lewiston Falls Bank *v.* Leonard, 43 Me. 144.

[5] Garthwaite *v.* Casson, 23 La. An. 218; Barrow *v.* Richardson. Id. 203.

support it, and supply an omission or defect in it.[1] Thus, in an action on notes against an indorser, the defendant denied that certain collateral bonds were tendered to the maker at the time the notes were presented for payment, as required by an agreement indorsed on said notes. It was held that the notary who had protested the notes could testify to facts connected with the tender, although no mention was made of it in the protest.[2]

A late case in Maryland is instructive in this connection. The certificate, dated December 23d, 1871, gave notice of the non-payment of the note, stating that payment had been demanded and refused. The note was due on the previous day, but there was no statement in the certificate showing it was then presented. It was permitted to introduce oral testimony to prove it had been presented on December 22d, at the date of its maturity.[3]

**§ 154. Records of a deceased notary as evidence.**— By the common law, the records of a deceased person, duly made in the discharge of his duties, were admissible in evidence.[4] Hence, the records of a notary, showing a demand of payment and notice to indorsers, have been allowed in evidence after the notary's death, though, if living, he would have to be called to testify to the same facts.[5] Now, by statute, such records are admissible in evidence after the decease of the notary, to prove protest and notice.[6]

### CERTIFICATE OF ACKNOWLEDGMENT.

**§ 155. Character of evidence.**—While a certificate of acknowledgment is not at all times conclusive, it certainly is the very strongest evidence of the facts therein recited, and can only be overcome by evidence of the clearest, strongest, and

[1] Bradley *v.* Davis, 26 Me. 45; Naylor *v.* Bowie, 3 Md. 251.

[2] Butler *v.* Murison, 18 La. An. 363.

[3] Reynolds *v.* Appleman, 41 Md. 615. The Court, in this case, distinguished it from Ransom *v.* Mack, 2 Hill, 587; Routh *v.* Robertson, 11 Sm. & M. 382; Townsend *v.* Lorain Bank, 2 Ohio, 345; Wyman *v.* Alden, 4 Denio, 163; because in these cases the time of making the demand was explicitly stated.

[4] 1 Greenlf. on Ev. Sec. 115.

[5] Brewster *v.* Doane, 2 Hill, 537; Welch *v.* Barrett, 15 Mass. 380; Butler *v.* Wright, 2 Wend. 369; Homes *v.* Smith, 16 Me. 181.

[6] Ogden *v.* Gildewell, 6 Miss. 179.

most convincing character, by disinterested witnesses.[1] Least of all, can it be contradicted by the officer who certified to the acknowledgment.[2] So, where a mortgage bore the notarial seal and signature of S S, but S S testified that he never affixed his seal to it, and that he believed himself to have been the only S S notary in Cincinnati, it was held that the seal proved itself, prima facie, and that the presumption in favor of the deed was not rebutted.[3]

So, in Morris *v.* Sargent,[4] it was held that mere want of recollection of signing and acknowledging the execution of a deed should have but little weight against the certificate of the officer that such execution was duly acknowledged; that the burden of proof is upon the party who impeaches the truthfulness of the official certificate of the acknowledgment of the execution of a deed, and the fact that a notary cannot remember incidents connected with the acknowledgment is entitled to little weight as against the certificate.

**§ 156. When certificate may be impeached.**—It is the policy of the law to give the fullest faith and credit to the acts of officers clothed with judicial or ministerial duties. On this principle, the certificate of acknowledgment duly executed is sustained, except where the evidence adduced to impeach it is of strong and convincing character; and then the decisions hold that it can be impeached only for fraud or combination. Not always even then, as when a purchaser in good faith acts on such certificate, having no knowledge of any fraud. The certificate will not entirely conclude a grantor;[5] he may show he never executed the instrument, and that if he did it was not acknowledged as set forth, or that he was induced by fraud or combination to so acknowledge it. But there must be something more than the evidence of the grantor to counteract and impeach the certificate, for that must prevail over his unsup-

[1] Kerr *v.* Russell, 69 Ill. 666; Van Orman *v.* McGregor, 23 Iowa, 300.

[2] Central Bank *v.* Copeland, 18 Md. 305; Harkins *v.* Forsyth, 11 Leigh, 294; Stone *v.* Montgomery, 35 Miss. 83.

[3] Wright *v.* Bundy, 11 Ind. 398. It will be observed that the officer's evidence was admitted in this case, because he denied executing the certificate.

[4] 18 Iowa, 90.

[5] Hutchinson *v.* Rust, 2 Gratt. 394; Dodge *v.* Hollinshead, 6 Minn. 25.

ported evidence. So in Lickmon *v.* Harding,[1] the Court say that "public policy requires such an act should prevail over the unsupported testimony of an interested party, otherwise there would be but slight security in titles to land." The same point was brought up for examination in Calumet etc. Co. *v.* Russell,[2] where an elaborate review of the authorities was made, and it was held that the official certificate of the acknowledgment of a deed for real estate must prevail over the unsupported testimony of an interested party in the absence of proof of fraud or collusion.

**§ 157. Can be impeached for fraud or collusion.**—The cases all show that the certificate can be impeached for fraud or collusion, and that oral evidence is admissible to show this.[3] Thus, if a married woman should be persuaded, by fraudulent statements as to the nature of the consideration her husband was to receive, to join in a conveyance of his land, she would not be barred of her dower in the land while in the hands of the party to the fraud, but it would be otherwise in case the land came into the possession of a bona fide purchaser, without notice of the fraud. He has a right to rely on the certificate as the highest, fullest, and most conclusive evidence that her title has been relinquished; and as to him, and all other bona fide purchasers, the certificate is conclusive—it cannot be impeached by oral evidence, so long as it is regular on its face. The security of titles demands this, that a bona fide purchaser shall be able to rely implicitly and exclusively on the certificate, provided it is regular on its face, and there is nothing to put him upon inquiry. This question has been fully and ably discussed in a late case in Illinois, which is very instructive in this connection. In this case,[4] a married woman sought to impeach the

[1] 65 Ill. 505.

[2] 68 Ill. 426.

[3] Graham *v.* Anderson, 42 Ill. 514; Montgomery *v.* Hobson, Meigs, Tenn. 437; Williams *v.* Robson, 6 Ohio St. 510.

[4] Kerr *v.* Russell, 69 Ill. 666. The Albany L. Journal, vol. 14, p. 273, criticises this case, and says: "But the Court say 'the *unsupported testimony* of a party to a deed that he did not execute it shall not prevail over the official certificate of the officer taking the acknowledgment.' This is giving to such a certificate even greater sanctity and force than attach to commercial paper; it prevents the possibility, in the great majority of cases, of proving the forgery, and subjects

certificate, on the ground that she never acknowledged the deed nor executed it. The certificate on its face was regular and formal, and the land had passed to several purchasers. The decision was given by Chief Justice Breese, and deserves attention for the careful and salutary views it lays down regarding the certificate as evidence. It was there held that an innocent purchaser of land has a right to rely upon the record of a deed which shows upon its face that a wife has executed and properly acknowledged a deed with her husband, and the wife will not be allowed to avoid the same, as to such a purchaser, without notice, by showing her signature to be a forgery, and that she never, in fact, acknowledged the same.

married women to the mercy of unscrupulous husbands and careless or dishonest notaries. It must at least be a question for the jury. This is precisely the province of the jury. Whether the bare oath of the interested party should prevail against the certificate of the officer, would depend on a variety of considerations—character, intelligence, memory, probability, and so forth; but still it is a question of fact and not of law." It is true that one reading the syllabus of this case may be misled, and might get the impression that in no case could the certificate be impeached in the hands of an innocent vendee, not even if the signature was a forgery. Now, no such inference—which would be incredible—can be derived from the case. Surely, if it is proven that a married woman never executed her deed, never personally appeared before the officer to acknowledge it, it is impossible that she could be concluded by the certificate, no matter how many may have relied upon it. But this case only goes to show that the evidence to impeach the certificate for fraud or forgery must be very complete and overwhelming; it does not, by any means, pretend to hold that it *cannot* be impeached.

# CHAPTER IX.

## COMMISSIONERS OF DEEDS.

§ 158. Appointment.
§ 159. Qualifications.
§ 160. Number appointed.
§ 161. Period for which appointed.
§ 162. Powers.
§ 163. Conditions to be complied with before exercising duties.
§ 164. Fee paid for commission.
§ 165. Requirements as to seal.
§ 166. Authentication of acts.
§ 167. Fees.
§ 168. Appointments published.

**§ 158. Appointment.**—As a general rule, throughout the United States, commissioners of deeds are appointed by the Governor of a State, to act in other States. There are a few States where the governor appoints by and with the consent of the senate or council. Thus, in Maryland, the statute provides for the appointment of commissioners of deeds by the governor, by and with the advice and consent of the senate; and the appointment and commissions are to be made biennially.[1] So, in New Jersey, the governor is to appoint, by and with the advice and consent of the senate.[2] In Massachusetts, the governor is to appoint, with the advice and consent of his council;[3] and the same is the provision in New Hampshire.[4]

**§ 159. Qualifications.**—It would, of course, be expected that the applicant for appointment should be a person who can bring recommendations as to character and intelligence; and it is, therefore, invariably the rule to require satisfactory assurance as to intelligence and integrity. In most cases, the mode of procuring and presenting such evidence of character and eligibility is prescribed by regulations drawn up in the execu-

[1] Code 1860, p. 119.
[2] Nixon's Dig. p. 155.
[3] Rev. Stat. 1860, p. 132.
[4] Gen. Stat. 1867. p. 63.

tive department of each State, which regulations can be obtained on application; but, in a few instances, the statutes provide certain qualifications, or conditions for appointment. For instance, in Illinois, the statute provides for a certain number of commissioners to be appointed, and then provides that the governor may appoint one additional for every ten thousand inhabitants in the cities of other States and Territories, when the governor receives a certificate under the seal of the mayor of the city, or the judge of a Court of record of a city in which such applicant resides or desires to open an office, of the number of inhabitants of said city, and that said applicant is a proper person to receive such appointment.[1] And, in Michigan, it is provided that the applicant, in all cases, shall present a written application, with proper recommendation for such office, from the governor of his State, or from a judge of a Court of Record in the county where such applicant resides, or other satisfactory evidence of his fitness for the office, and shall pay into the State treasury three dollars.[2]

**§ 160. Number appointed.**—The statutes, in nearly all instances, give the governor authority to appoint as many as he deems expedient; in a few cases, the limit is prescribed, as in Illinois, where it is provided that the governor may appoint as many as he deems expedient, but the number of such commissioners shall at no time exceed five in any one city or county.[3] In New York, the governor may appoint one or more commissioners, not exceeding five, in each city in any foreign State or country.[4]

**§ 161. Period for which appointed.**—In many of our States, there is no limited period prescribed for which they are appointed. The statutes use the expression that they "shall hold office during the pleasure of the governor." This is the case in Alabama, Arkansas, Florida, Georgia, Kansas, Maine, Maryland, Minnesota, Missouri, North Carolina, Pennsylvania, South Carolina, Texas, Vermont, West Virginia, and Wisconsin. In the remaining States, there is a definite period pre-

[1] Rev. Stat. 1874, p. 267.
[2] Comp. Laws, 1871, p. 220.
[3] Rev. Stat. 1874, p. 266.
[4] 2 Rev. Stat. 6th Ed. 1142.

scribed for which they are appointed. Four years is, in these States, the general period for which they are appointed. This is the term in California,[1] Illinois,[2] Indiana,[3] Nebraska,[4] Nevada,[5] New York,[6] and Oregon.[7] In the Territory of Arizona, the period is also four years.[8] In Connecticut, the term is five years;[9] and the same is the term in Michigan[10] and New Hampshire.[11] In Delaware it is seven years, the longest definite period.[12] In the States of Kentucky, Mississippi, and Virginia, the term is two years;[13] and in Iowa, New Jersey, and Ohio, it is three years.[14]

**§ 162. Powers.**—The powers conferred on commissioners of deeds under our statutes are very uniform throughout. These powers are to administer oaths and affirmations, and to take depositions, affidavits, and the proof and acknowledgment of deeds or other instruments of writing, to be used or recorded in the State from which they derive their appointment. The statutes, moreover, provide that their acts are to have the same force and effect, and shall be as effectual in law, as if done and certified by any justice of the peace or other authorized officer within the State. It was decided, in a case in Georgia, that a commissioner of deeds had no power to certify to the official character of a foreign officer in the State where the commissioner resides.[15] Usually, the acknowledgment need only be attested by the commissioner; but in Georgia, a mortgage of real property, besides being acknowledged before an officer empowered to take acknowledgments, is required to be attested by a witness. In McCrary *v.* Anstell,[16] it appeared a mortgage was executed in New York in the presence of Edwin F. Corey, a commissioner of the State of Georgia, and no other witness than Corey attested the mortgage deed, for the reason that it was the belief of both parties that such execution was valid without being attested by another witness. In an action to

[1] Pol. Code, Sec. 811.
[2] Rev. Stat. 1874, p. 266.
[3] 1 G. & H. 254.
[4] Gen. Stat. 1873, p. 877.
[5] Comp. Laws, Sec. 324.
[6] 2 Rev. Stat. 6th Ed. 1142.
[7] Gen. Laws 1874, p. 295.
[8] Comp. Laws, p. 347.
[9] Rev. Stat. 1875, p. 22.
[10] Comp. Laws, p. 220.
[11] Gen. Stat. 1867, p. 63.
[12] Rev. Code 1874, p. 183.
[13] Rev. Code Ky. p. 203; Code of Miss. Sec. 800; Code of Va. p. 568.
[14] Code of Iowa, p. 43; Nixon's Dig. p. 155; 1 Swan & C. 874.
[15] O'Bannon *v.* Paremour, 24 Ga. 489.
[16] 46 Ga. 450.

foreclose this mortgage, it was decided, that as equity would have power under such circumstances to reform the mortgage, it would still retain it to foreclose it.

**§ 163. Conditions to be complied with before exercising duties.**—Before the commissioner can proceed to execute the duties of his office there are two prerequisites the statutes point out. These are, to take and subscribe an oath to faithfully discharge the duties of his employment, and to provide a seal; then, within a certain definite period after his appointment, to file the affidavit, and an impression of his seal and signature, in the office of the Secretary of State. The period allowed to do this is generally six months;[1] in other cases, it is three months.[2] When an application is made to the executive for appointment, a blank form of affidavit is returned to the applicant, which he is required to fill up, and swear to before some officer having authority to administer oaths in his State.

In one of our States only is a bond required by statute from the applicant.[3] In Vermont, it is provided: "Before any commissioner, appointed as aforesaid, shall proceed to perform any of the duties of his office, he shall take and subscribe an oath before some magistrate, authorized to administer oaths in the State for which commissioner is appointed, that he will faithfully discharge the duties of his office, and shall execute a bond to the State, with sureties to the satisfaction of the governor, in the penal sum of $500, conditioned for the proper exercise of the powers and the faithful discharge of his duties as commissioner, which bond may be put in suit in the name of the State, against the principal and sureties, or any or either of them, by any person who has been injured by the neglect of such commissioner."[4]

**§ 164. Fee paid for commission.**—Before a commission is delivered, it is the general rule to require a certain fee from the

[1] As in Arkansas, Arizona, California, Illinois, Missouri, New Hampshire.

[2] As in Mississippi.

[3] The author is aware that in a few places a bond is required by the executive from the appointee; where this is the case, and the amount will be learned, when application is made to the executive department of a State.

[4] Rev. Stat. 1870, p. 73.

appointee, which is usually not above ten dollars. The statutes provide, in some cases, for the disposition of the money so obtained on the commission. In Arizona, the secretary of the Territory shall be entitled to receive a compensation of ten dollars from each person hereafter appointed and commissioned.[1] In Illinois, the secretary of State is required to forward forms and instructions to commissioners, and with the certificate of appointment a copy of the laws relative to such officers, for which he shall be entitled to receive five dollars.[2] In Mississippi, the Secretary of State is entitled to receive two dollars and fifty cents for every commission.[3] In Nevada, the appointee is required to pay ten dollars, exclusive of other legal charges on his commission, for the use of the "Library Fund" of the State.[4] In Ohio, the fee to be paid is three dollars, and the money obtained in this manner, after paying the wages of a messenger for the executive officer, shall form part of the compensation of the private secretary of the governor.[5] In West Virginia, the fee is fixed at five dollars.[6]

**§ 165. Requirements as to seal.**—A seal is indispensably necessary before the commissioner can execute the duties of his office. In some States, no particular provision is made for a description of seal, it being a general rule that the name of the commissioner shall appear thereon, with the words, "A Commissioner for the State of ———," and the name of the city or place where the commissioner exercises the duties of his office. Such States as have made special provision for a description of a seal to be used by a commissioner, we will now notice. In California, the statute requires him to have an official seal, upon which must be engraved the arms of the State, the words, "Commissioner of Deeds for the State of California," and the name of the State for which he is commissioned.[7] In Illinois, on the seal shall be designated his name, and the words, "A Commissioner for the State of Illinois," together with the name of the State, Territory, or country for which appointed.[8] In Iowa, on the seal shall be engraved the words, "Commissioner

[1] Comp. Laws, p. 347.
[2] Rev. Stat. 1874, p. 267.
[3] Code 1871, Sec. 800.
[4] Comp. Laws, Sec. 328.
[5] 1 Swan & C. 874.
[6] Code 1868, p. 387.
[7] Pol. Code, Sec. 812.
[8] Rev. Stat. 1874, p. 266.

for Iowa," with his surname at length, and at least the initials of his Christian name; also, the name of the State in which he acts.[1] In Massachusetts, on the seal shall be designated his name, the words, "Commissioner for Massachusetts," and the name of the State or Territory, city and county where the commissioner resides.[2] In Nebraska, his name and the words, "A Commissioner for Nebraska," together with the name of the State or Territory, city and county within which he shall reside, and for which appointed.[3] In New York, to have name, and the words, "Commissioner of Deeds for the State of New York," with the name of the city and foreign State or country for which he shall be appointed.[4] In Oregon, the commissioner is to provide a seal of office with the arms of the State engraved in the center thereof, and with the following inscription surrounding the same: "Commissioner for Oregon, ———," the blank following the word Oregon to be filled with the name of the State, Territory, or district for which such commissioner is appointed.[5]

In West Virginia, it is provided that the seal shall have designated on it the name and the words, (either at length, or by intelligible abbreviations) "Commissioner for West Virginia in ———," the blank to be filled up with the name of the State, Territory, or district for which he is appointed.[6]

**§ 166. Authentication of acts.**—It is a general rule that the acts of a commissioner require no further authentication to entitle them to be received in evidence or recorded in the State for which he derives his appointment, than his own signature and official seal. So it was held, in Johnson *v.* Cocks,[7] that depositions taken before a commissioner of deeds, appointed by the governor of the State to act in another State, may be read in evidence, without other proof of the appointment and authority of such commissioner than his own certificate and official seal. This general rule is not followed in New York, for by a statute passed in 1875,[8] it is there provided that, before the certificates of such officers can be admitted in evidence, there

[1] Code, p. 43.
[2] Rev. Stat. 132.
[3] Gen. Stat. p. 877.
[4] 2 Rev. Stat. (6th Ed.) 1142.
[5] Gen. Laws, p. 295.
[6] Code 1868, p. 387.
[7] 12 Ark. 672.
[8] Laws of 1875, Chap. 136, Sec. 2.

must be produced a certificate by the Secretary of State that he is acquainted with the handwriting of such commissioner, or has compared his signature with the signature of such commissioner deposited in his office, and has also compared the impression of the seal affixed to such certificate with the impression of the seal of such commissioner deposited in his office, and that he believes the signature and impression of the seal of the said certificate to be genuine.

**§ 167. Fees.**—Commissioners usually charge the same fees as are allowed to notaries in the States where they act. In some of our statutes, there is express provision made for the fees they are entitled to demand, and in some instances the penalty of removal is attached for taking any more than are thus expressly laid down. The statute in California gives them the same fees as are prescribed for notaries public, which are: For drawing an affidavit, deposition, or other paper, for each folio, thirty cents; for taking the acknowledgment or proof of a deed or other instrument, to include the seal and the writing of the certificate, for the first two signatures one dollar each, and for each additional signature fifty cents; for administering an oath or affirmation, fifty cents; for every certificate, to include writing the same and the seal, one dollar.[1] In Delaware, the fees are: For taking an acknowledgment of a deed, one dollar; for taking and certifying an affidavit, fifty cents. The Iowa Code provides that they may demand the same fees as are allowed in the State where they act.[2] In New Jersey, they are allowed such fees as are allowed by law for like services to officers in that State, and in case it shall be made to appear that any such commissioner takes greater fees, it shall be the duty of the governor to remove him.[3] The statute of Ohio provides he shall be entitled to charge and receive for his services the following fees and no more: For swearing each witness, twenty-five cents; for each one hundred words contained in any deposition, certificate, or affidavit taken before him, twenty cents; for authenticating, sealing up, and directing each deposition, one dollar; for authenticating each affidavit sworn before him, one dollar; for taking an acknowledgment, two dollars.[4]

[1] Pol. Code, Secs. 798, 815.
[2] Code, p. 43.
[3] Nixon's Dig. p. 155.
[4] 1 Swan. & C. 874.

**§ 168. Appointments published.**—Provision is made in some statutes for the publication of the names of commissioners appointed, as in California, where the names of all persons appointed are to be published three times in some weekly newspaper published at the seat of government of the State.[1] There is a similar provision in South Carolina, where notice of appointment is to be given in "one or more gazettes of the State."[2] The statute in Iowa prescribes that the Secretary of State shall cause to be published with the session laws of each general assembly, a full and complete list of all commissioners for Iowa, who are duly qualified, and whose commissions do not expire on or before the 4th of July of the year in which such publication is made, which list shall give the post-office address, date of qualification, and date of expiration of the commission of each commissioner.[3] And in North Carolina there is a similar requirement, and the Secretary of State is to cause to be printed a list in the Acts of the General Assembly.[4]

[1] Pol. Code, Sec. 816.
[2] Rev. Stat. p. 113.
[3] Code, p. 43.
[4] Battle's Dig. p. 251.

# FORMS.

# FORMS OF ACKNOWLEDGMENT.

The following forms have been carefully selected, and compared with the requirements of the statutes in each State. Where the statutes have prescribed forms, these have been given, and the fact noted. It will be seen, on reference to Sec. 49 of this work, that in twenty-two of the States of the Union married women are required to make a private acknowledgment. These States are: Arkansas, California, Colorado, Delaware, Florida, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and West Virginia; and forms are given for such acknowledgments under these States. By a recent statute in Alabama, (Stat. 1872–3, p. 65) married women are required to make a private acknowledgment in a conveyance of a homestead in Alabama, and the statute prescribes a form, which is here given under Alabama.

In some certificates of acknowledgment, the officer concludes with the formal part—"In witness whereof, I have hereunto set my hand and official seal," etc.; but unless the certificate is given to be used out of the State, this formal part is conceived to be unnecessary.

With regard to acknowledgments by corporations, we should observe that, in some of the older States, there is a form required, as in New York, which is based on the old rule, which attached great importance to the seal, and here the officer making the acknowledgment on behalf of the corporation is required to give proof of the seal. But this is now obsolete; the general practice is now to require an acknowledgment simply by the president, or other agent of the corporation, on its behalf, the same as any other attorney would acknowledge for and on behalf of his principal, as for instance in the form given under California, which may be considered a general form of this class. In a few cases, the old style of acknowledgment of a corporation is retained, and these cases will be found under the States using such forms.

## ALABAMA.

1. *Form of acknowledgment of conveyance.*

THE STATE OF ALABAMA, }
—— County. }

I [*name and style of the officer*] hereby certify that —— ——, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me, on this day, that, being informed of the contents of the conveyance, he executed the same voluntarily, on the day the same bears date. Given under my hand this —— day of —— A. D., 18——. A—— B——.

[Form given in Rev. Code, Sec. 1548.]

2. *Form of probate of conveyance.*

THE STATE OF ALABAMA, }
—— County. }

I [*name and style of the officer*] hereby certify that —— ——, a subscribing witness to the foregoing conveyance, known to me, appeared before me this day, and, being sworn, stated that —— ——, the grantor in the conveyance, voluntarily executed the same in his presence, and in the presence of the other subscribing witness, on the day the same bears date; that he attested the same in the presence of the grantor and of the other witness, and that such other witness subscribed his name as a witness in his presence. Given under my hand this —— day of ——, A. D. 18——.

[Form given in Rev. Code, Sec. 1549.] A—— B——.

3. *Acknowledgment of wife in conveyance of homestead.*

STATE OF ALABAMA, }
County of ——, } ss.

I, ——, judge, [or chancellor, as the case may be] do hereby certify, that on the —— day of ——, 18——, came before me the within named ——, known, or made known to me, to be the wife of the within named ——, who, being by me examined separate and apart from her husband, touching her signature to the within ——, acknowledged that she signed the same of her own free will and accord, and without fear, constraint, or persuasion of her husband.

In witness whereof, I hereunto set my hand, this —— day of ——, 18——. A B, Judge [or Chancellor].

[The statute provides that no mortgage or other alienation of any homestead by the owner thereof, if a married man, shall be valid, without the voluntary signature and assent of his wife, which voluntary signature and assent must be shown by the examination of the wife, separate and apart from her husband, touching the same, had before a Circuit or Supreme Court judge, chancellor, or judge of probate.]

## ARIZONA.

4. *Acknowledgment by grantor.*

TERRITORY OF ARIZONA, } ss.
County of ——, }

On this —— day of —— A.D. ——, personally appeared before me, a notary public, [or judge, or officer, as the case may be] in and for the said county, A B, known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned. [*Signature and title.*]

[The above form is prescribed in the Statutes. Comp. Laws, p. 361. The form for the private acknowledgment of a married woman is the same as that in use in California. Acknowledgment in the State may be made before some judge or clerk of a Court having a seal, or some notary public or justice of the peace of the proper county. Out of the State, and within the United States, acknowledgments may be made before some judge or clerk of any Court of the United States, or of any State or Territory having a seal, or by a commissioner of the Territory, but not by a notary public.]

——o——

## ARKANSAS.

5. *Form of acknowledgment in Arkansas.*

STATE OF ARKANSAS, }
County of ——. }

On this —— day of ——, 18——, before me ——, a justice of the peace within and for the county of ——, in the State of Arkansas, appeared in person —— ——, to me personally well-known as the person whose name appears upon the within and foregoing deed of conveyance as the party grantor, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

In testimony whereof, I have hereunto set my hand as such justice of the peace, in the county of ——, on the —— day of ——, 18——. JAMES C. HUTCHINS, J. P.

[If the grantor is unknown to the justice, instead of the words "to me personally well-known as the person," say: "who, being unknown to me, was proven to my satisfaction to be the identical —— ——, whose name appears upon the within and foregoing deed as the party grantor, by the oath of —— —— and witnesses, sworn and examined by me as to such identity," and stated, etc.]

[Gantt's Digest, p. 1059.]

## ARKANSAS—CONTINUED.

### 6. *Acknowledgment by husband and wife of a joint deed for the husband's land.*

STATE OF ARKANSAS, }
County of ——. }

On this —— day of ——, 18——, before me, —— ——, a justice of the peace within and for the county of ——, in the State of Arkansas, appeared in person —— ——, to me personally well-known as the person whose name appears upon the within and foregoing deed of conveyance as one of the parties grantor, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

And I further certify that on this day voluntarily appeared before me —— ——, wife to the said —— ——, to me well-known to be the person whose name appears upon the within and foregoing deed, and in the absence of her said husband declared that she had, of her own free will, signed the relinquishment of dower therein, expressed for the purposes therein contained and set forth, without compulsion or undue influence of her said husband.

In testimony whereof, I have hereunto set my hand, as such justice of the peace, at the county of ——, on the —— day of ——, 18——.

JOHN R. WALKER, J. P.

[Gantt's Digest, p. 1060.]

### 7. *Acknowledgment by husband and wife of a joint deed for the wife's land.*

STATE OF ARKANSAS, }
County of ——. }

On this —— day of ——, 18——, before me, —— ——, a justice of the peace within and for the county of ——, in the State of Arkansas, appeared in person —— ——, to me personally well-known as the person whose name appears upon the within and foregoing deed of conveyance as one of the parties grantor, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

And I further certify that on this day voluntarily appeared before me —— ——, wife to the said —— ——, to me well-known to be the person whose name appears upon the within and foregoing deed, and in the absence of her said husband declared that she had, of her own free will, executed the same for the purposes therein contained and set forth, without compulsion or undue influence of her said husband.

In testimony whereof, I have hereunto set my hand, as such justice of the peace, in the county of ——, on the —— day of ——, 18——.

JOHN R. WALKER, J. P.

[Gantt's Digest, p. 1060.]

## ARKANSAS—Continued.

8. *Proof of deed by subscribing witness.*

State of Arkansas, }
County of ——. }

Be it remembered, that on this —— day of ——, 18——, before me, —— ——, a justice of the peace in and for the county aforesaid, personally appeared —— ——, one of the subscribing witnesses to the foregoing deed, to me personally well-known, who, being by me first duly sworn, on his oath stated that he saw —— ——, grantor in said deed, subscribe said deed on the day of its date, [or, that that the said —— ——, grantor in said deed, acknowledged in his presence, on the —— day of ——, 18——, that he had subscribed and executed said deed] for the uses and purposes and consideration therein expressed, and that he and —— ——, the other subscribing witness, subscribed the same as attesting witnesses at the request of said grantor.

In testimony whereof, I have hereunto set my hand, as such justice of the peace, at the county aforesaid, this —— day of ——, 18——. James C. Hutchins, J. P.

[Gantt's Digest, p. 1059.]

[The preceding forms are given in reference to an acknowledgment before a justice of the peace; but they are equally adapted to other officers, as a notary public, or commissioner of deeds.]

——o——

## CALIFORNIA.

9. *Acknowledgment by grantor.*

State of California, } ss.
County of ——, }

On this —— day of ——, in the year ——, before me, [*here insert the name and quality of the officer*] personally appeared —— ——, known to me [or proved to me on the oath of —— ——] to be the person whose name is subscribed to the within instrument, and acknowledged to me that he [or they] executed the same.

[Form given in Civil Code, Sec. 1189.] A—— B——.

10. *Acknowledgment by a corporation.*

State of California, } ss.
County of ——, }

On this —— day of ——, in the year ——, before me, [*here insert the name and quality of the officer*] personally appeared —— ——, known to me [or proved to me on the oath of —— ——] to be the president [or the secretary] of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same. A—— B——.

[Form given in Civil Code, Sec. 1190.]

## CALIFORNIA—CONTINUED.

**11.** *Acknowledgment by a married woman.*

STATE OF CALIFORNIA, } ss.
County of ——, }

On this —— day of ——, in the year ——, before me [*here insert the name and quality of the officer*] personally appeared —— ——, known to to me [or proved to me on the oath of —— ——] to be the person whose name is subscribed to the within instrument, described as a married woman; and upon an examination, without the hearing of her husband, I made her acquainted with the contents of the instrument, and thereupon she acknowledged that she executed the same, and that she does not wish to retract such execution. A—— B——.

[Form given in Civil Code, Sec. 1191.]

**12.** *Acknowledgment when wife joins in deed.*

STATE OF CALIFORNIA, } ss.
County of ——, }

On this —— day of ——, A. D. one thousand eight hundred and seventy ——, before me [*here insert the name and quality of the officer*] personally appeared —— ——, and —— ——, his wife, whose names are subscribed to the annexed instrument, known to me to be the same persons described in and who executed the said instrument, who each of them acknowledged to me that they respectively executed the same.

And the said —— ——, described as a married woman and the wife of the said —— ——, upon examination, without the hearing of her husband, was made acquainted by me with the contents of said instrument, and thereupon she acknowledged to me that she executed the same, and that she does not wish to retract such execution. [*Signature and title.*]

[If taken without the State, add: "In testimony whereof, I have hereunto set my hand and affixed my official seal, the day and year first above written." By Sec. 1188, Civil Code, amended 1874, a certificate may be either annexed to or written on the instrument.]

**13.** *Acknowledgment by grantor under power of attorney.*

STATE OF CALIFORNIA, } ss.
County of ——, }

On this —— day of ——, A. D. one thousand eight hundred and seventy ——, before me, ——, a —— in and for the said —— county, personally appeared ——, known to me [or proved to me on the oath of ——] to be the same person whose name is subscribed to the within instrument as the attorney in fact of ——, and acknowledged to me that he subscribed the name of —— —— thereto as principal, and his own name as attorney in fact.

[Form given in Civil Code, Sec. 1192.] [*Signature and title.*]

## CALIFORNIA—CONTINUED.

**14.** *Proof by subscribing witness known to the officer.*

STATE OF CALIFORNIA, } ss.
County of——, }

On this —— day of ——, 18——, before me [*here insert the name and quality of the officer*] personally appeared —— ——, personally known to me to be the same person whose name is subscribed to the annexed instrument as a witness thereto, who, being by me duly sworn, deposed and said: That he resided at ——, in the county of ——, State of ——; that he was present and saw —— ——, known to him to be the same person described in and who executed the annexed instrument as a party thereto, sign, seal, and deliver the same, and that the said —— —— acknowledged in the presence of deponent that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned, and that he, the deponent, thereupon signed his name as a subscribing witness thereto. A—— B——.

[By the Civil Code, Sec. 1195: "Proof of the execution of an instrument, when not acknowledged, may be made: 1st. By the party executing it, or either of them; or 2d. By a subscribing witness; or 3d. By other witnesses" in certain cases.]

——o——

## COLORADO.

**15.** *Acknowledgment by grantor.*

STATE OF COLORADO, } ss.
County of——, }

Be it known, that on this —— day of ——, 18——, before me, —— ——, personally came A B, to me personally known as the same person described in and who executed the foregoing instrument, and acknowledged the execution thereof to be his free act and deed, for the uses and purposes therein mentioned.*

Witness, etc. [*Signature and title.*]

**16.** *The same where the wife joins.*

[*Insert in the preceding form at the *:*] And at the same time personally appeared before me the within named C B, wife of the said A B, who, being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed, and delivered the said instrument as her voluntary act and deed, freely and without any threat, compulsion, or fear of her said husband.

## CONNECTICUT.

**17.** *Acknowledgment by grantor.*

STATE OF CONNECTICUT, } ss.
County of ——, }

On this —— day of ——, 18——, personally appeared A B, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed, before me. [*Signature and title.*]

[In Connecticut, two witnesses are required; but by their statute it is provided that deeds executed in another State or Territory may be executed and acknowledged there, in accordance with the laws thereof. But both execution and acknowledgment must conform: thus, execution in New York with but one witness, and acknowledgment there before a Connecticut commissioner, is insufficient. Farrell Foundry *v.* Dart, 26 Conn. 376.]

**18.** *Acknowledgment of a deed by a corporation.*

STATE OF CONNECTICUT, } ss.
County of ——, }

On this —— day of ——, 18——, personally appeared A B, who, being duly authorized and appointed by vote of the directors of the said, [*naming the corporation*] the agent of said company, for the purpose of executing the foregoing instrument, acknowledged that he executed the same as the free act and deed of the said corporation, and as his own free act and deed, before me.

[*Signature and title.*]

—o—

## DAKOTA.

**19.** *Acknowledgment by grantor.*

TERRITORY OF DAKOTA, } ss.
County of ——, }

Be it remembered, that on this —— day of ——, 18——, before me, the subscriber, personally came A B, to me personally known as the same person described in and who executed the foregoing instrument of writing, and acknowledged the execution thereof to be his free act and deed, for the uses and purposes therein mentioned.

In witness whereof, I have, this —— day of ——, 18——, made this certificate, and hereunto set my hand.

[*Signature and title.*]

[A private acknowledgment is only required when the wife conveys property in her own right; and the form is similar to that previously given for Colorado. Two witnesses are necessary to

DAKOTA—CONTINUED.

the conveyance; but deeds executed without the Territory and within the United States may be executed according to the laws of the place of execution, and may be acknowledged before any officer authorized by the laws of the place to take acknowledgments. Laws of Dakota, (1862) p. 269. When a deed is executed out of the State, a certificate must accompany it to show it is executed according to the law of the place.]

—o—

## DELAWARE.

20. *Acknowledgment by husband and wife.*

THE STATE OF DELAWARE, }
County of ——, } ss.

Be it remembered, that on the —— day of——, in the year of our Lord one thousand eight hundred and ——, personally came before the subscribers, two of the justices of the peace for —— county aforesaid, —— —— and —— ——, his wife, parties to this indenture, known to us personally [or proved on the oath of —— ——] to be such, and severally acknowledged said indenture to be their act and deed respectively; and that the said —— ——, being at the same time privately examined by us, apart from her husband, acknowledged that she executed the said indenture willingly, without compulsion, or threats, or fear of her husband's displeasure.

Witness our hands the day and year aforesaid.

[*Signatures and titles.*]

[This form is prescribed in the Code, p. 502. If the acknowledgment be made by a single grantor, or a private examination only is taken, the form will be varied to suit each case. Where an acknowledgment is taken in a Court, the authentication will be under the hand or seal of the clerk or prothonotary; if before the chancellor or other officer, it will be under his hand.]

21. *Acknowledgment of the deed of a corporation.*

STATE OF DELAWARE, }
County of ——, } ss.

Be it remembered, that on the —— day of ——, in the year ——, before us ——, [or me, as the case may be] came A B, the president of the Bank of ——, to us personally known, and who, being by us duly sworn, deposes and says: That he resides in the village of ——, in said county; that he is president of the Bank of ——; that the seal affixed to the within indenture is the corporate seal of the president, directors, and company of the said bank, and was affixed to the said indenture by order of said directors, for the uses therein expressed; and that he by like order did subscribe his name thereto, as president of said bank.

 [*Signatures and titles.*]

## DISTRICT OF COLUMBIA.

22. *Acknowledgment by grantor.*

STATE OF ——, } ss.
County of ——, }

I, A B, a justice of the peace, [or other prescribed officer, giving his title] in and for the county [or city or parish or district] aforesaid, in the State [or Territory or district] of ——, do hereby certify that C D, a party, [or C D and E F, etc., parties] to a certain deed bearing date on the —— day of ——, and hereto annexed, personally appeared before me in the county [or city, etc.,] aforesaid, the said C D [or C D and E F, etc.,] being personally well-known to me as [or proved by the oaths of credible witnesses before me to be] the person [or persons] who executed the said deed, and acknowledged the same to be his [her or their] act and deed. Given under my hand and seal this —— day of ——.

A. B. [SEAL.]

23. *Acknowledgment by married woman.*

STATE OF ——, } ss.
County of ——, }

I, A B, a justice of the peace, [or other prescribed officer, giving title] in the county [or city, etc.] aforesaid, in the State [or Territory, etc.] of ——, do hereby certify that C D, the wife of E F, party to a certain deed bearing date on the —— day of ——, and hereunto annexed, personally appeared before me in the county [or city, etc.] aforesaid, the said C D being well known to me [or proved by the oaths of credible witnesses before me to be] the person who executed the said deed; and being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her, the said E F acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it. Given under my hand and seal this —— day of ——. A. B. [SEAL.]

[These forms are prescribed in the Statute, Rev. Stat. p. 52. The statute provides that acknowledgments of deeds may be made before any of the following officers of the State, district, county, or Territory within the United States, in which the person making the deed may be: 1st. Before any judge of a Court of Record or Law. 2d. Before any chancellor of a State. 3d. Before any judge of the Supreme, Circuit, District or Territorial Courts of the United States. 4th. Before any justice of the peace. 5th. Before any notary public. 6th. Before any commissioner of the Circuit Court of the district appointed for that purpose.

When made beyond the limits of the district within the United States, a certificate of the official character of the officer, under the official seal of a register, clerk, or other public officer having cognizance of the fact, must be attached.]

## FLORIDA.

**24.** *Acknowledgment by husband and wife.*

STATE OF FLORIDA, } ss.
County of ——, }

On this —— day of ——, 18——, before me [*name and title of officer*] personally appeared A B, and C B, his wife, to me known to be the persons described in and who executed the foregoing instrument, and severally acknowledged the execution thereof to be their free act and deed, for the uses and purposes therein mentioned. And the said C B, the wife of said A B, on a private examination by me, separate and apart from her husband, did acknowledge that the said deed of renunciation and relinquishment of dower, and the said acknowledgment, was made freely and voluntarily, and without any compulsion, constraint, apprehension, or fear of or from her said husband. [*Signature and title.*]

**25.** *Relinquishment of dower when taken out of the State.*

STATE OF ——, }
City and County of ——, } ss.

Be it remembered, that on this —— day of ——, in the year of our Lord 18 ——, before me, the clerk of the —— Court, for the [city or] county of ——, and State of ——, which said Court is a Court of Record, personally came —— ——, wife of —— ——, to me well-known as the person described in and who executed the foregoing deed of conveyance, [as the case may be] and acknowledged that she made herself a party to and executed the same for the purpose of relinquishing her dower in and to the lands and tenements therein described; and said —— ——, on a private examination, taken and made before me, in the presence of the honorable —— ——, judge of our said Court, separately and apart from her said husband, acknowledged and says that the said relinquishment and renunciation of dower was and is made freely and voluntarily, and without any compulsion or constraint, apprehension or fear, of or from her said husband, the said —— ——, to which acknowledgment the said —— —— has, in my presence, and in the presence of the said —— ——, judge of our said Court, this day set her hand and seal.

Witness my hand and the seal of our said Court at ——, in ——, this the day and year first above written.

[*Seal of Court.*] [*Signature of wife.*] [SEAL.]

A B, CLERK, etc.

[The statute provides that when any relinquishment of dower shall be made out of the State, the acknowledgment shall, if made in the United States, be taken by the clerk or prothonotary of some Court of Record in the State, Territory, or district in which it shall be made, in the presence of the judge or justice, or of one of

FLORIDA—CONTINUED.

the judges or justices of the Court to which the clerk or prothonotary who takes the acknowledgment shall belong, and such acknowledgment so taken shall be certified by the clerk or prothonotary taking it under the seal of the Court, if it have one, and if it have none, it shall be stated in the said certificate; and the taking of the said acknowledgment and the certificate of the clerk or prothonotary shall be authenticated under the hand of the judge or justice present at the making thereof, by his certifying that the said acknowledgment was made in his presence, and that the person acting as clerk or prothonotary was, at the time of his so doing, the clerk or prothonotary of the Court of which he is judge or justice. Bush's Dig. p. 150.]

26. *Acknowledgment without State, grantor not personally known.*

STATE OF ——, } ss.
County of ——, }

On this —— day of ——, 18——, before me, I K, a commissioner duly appointed and authorized by the executive authority, and under the laws of the State of Florida, to take within the State of —— proof and acknowledgment of deeds, etc., to be used and recorded in said State of Florida, personally appeared A B, who was proven to me satisfactorily to be the person described in and who executed the foregoing instrument, by the oath of M N, who, being by me duly sworn, did depose and say: That he resided in —— in the county of ——; that he was acquainted with the said A B, and that he knew him to be the same person described in and who executed the within conveyance; and thereupon the said A B acknowledged the execution thereof to be his free act and deed for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my seal of office, at ——, the day and year first above written.

[*Signature and title.*]

——o——

## GEORGIA.

27. *Acknowledgment by grantor.*

STATE OF GEORGIA, } ss.
County of ——, }

Be it remembered, that on this —— day of ——, one thousand eight hundred and ——, before me, the undersigned, [*naming officer and title*] personally came A B, to me known to be the person described in and who executed the foregoing [or within] conveyance, and acknowledged the same to be his free act and deed. [*Signature and title.*]

## GEORGIA—CONTINUED.

[Dower in Georgia is only in the lands of which the husband was seized and possessed at the time of his death, as in Connecticut: Georgia Code, (1873) Sec. 1763; or to which the husband obtained title in right of his wife, and in such the wife will have to join in the deed to relinquish dower, and the form may be the following:]

28. *Renunciation of dower.*

STATE OF GEORGIA, } ss.
County of ——, }

I, ——, the wife of ——, do declare that I have, freely and without compulsion, signed, sealed, and delivered the above instrument of writing, passed between —— and ——, and I do hereby renounce all title or claim of dower that I might claim or be entitled to after the death of ——, my said husband, to or out of the lands or tenements therein conveyed. [*Signature of wife.*]

29. *Acknowledgment of husband and wife.*

STATE OF GEORGIA, } ss.
County of ——, }

Be it remembered, that on this —— day of ——, A. D. ——, before me, [*name and style of officer*] personally appeared —— ——, and —— ——, his wife, to me personally known to be the individuals named in and who executed the foregoing deed, for the purposes therein named and mentioned; and the said —— ——, being duly examined by me, separately and apart from her said husband, did declare that she did, freely and voluntarily, and without compulsion from her said husband, sign, seal, and deliver the said deed for the purposes therein mentioned, with intention thereby to renounce, give up, and forever quit-claim her right of dower and thirds, and all her other interest of and to the lands and tenements therein mentioned and conveyed. [*Signature and title.*]

—o—

## IDAHO.

30. *Acknowledgment by grantor, prescribed.*

TERRITORY OF IDAHO, } ss.
County of ——, }

On this —— day of ——, A. D. 18——, personally appeared before me, [*name and style of officer*] A B, personally known to me to be the person described in and who executed the foregoing instrument, and who acknowledged to me that he executed the same freely and voluntarily, for the purposes therein mentioned.

[*Signature and title.*]

[For form for private acknowledgment of wife, adopt form given for California.]

## ILLINOIS.

**31.** *Acknowledgment by grantors.*

STATE OF ILLINOIS, } ss.
County of ——, }

I, [*here give name of officer and his official title*] do hereby certify that [*name of grantor, and, if acknowledged by wife, her name, and add "his wife"*] personally known to me to be the same person whose name is [or are] subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he [she or they] signed, sealed, and delivered the said instrument, as his [her or their] free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and [*private or official, as the case may be*] seal, this [*day of the month*] day of [*month*], A. D. [*year*].

[*Signature of officer.*] [*Seal.*]

[This is the form prescribed in the statute. It is provided that a deed executed without the State, and within the United States, may be executed and acknowledged in accordance with the laws of the place of execution, if certified by a clerk of a Court of Record to be so done. But it must conform wholly to the laws of one State, or to those of the other. Rev. Stat. 1874, p. 277. It seems that conformity may be shown by producing a copy of the laws of a State, as well as by supplying a certificate. Hurt *v.* McCartney, 18 Ill. 129. A certificate by a notary of another State should be under his official seal. Booth *v.* Cook, 20 Ill. 129.]

—o—

## INDIANA.

[There is no occasion for a private acknowledgment by the wife, and the ordinary form of acknowledgment will suffice, but the following form, much simplified, is given by statute:]

**32.** *Acknowledgment by grantor.*

STATE OF INDIANA, } ss.
County of ——, }

Before me, M N, a judge [or justice, as the case may be] this —— day of ——, 18——, A B acknowledged the execution of the annexed [or within] deed [or mortgage, as the case may be].

[*Official seal, if any.*] [*Signature and title.*]

## IOWA.

**33.** *Acknowledgment by grantor.*

STATE OF IOWA, } ss.
County of ——, }

This is to certify, that on this —— day of ——, A. D. 18——, before me [*name and style of officer*]* personally appeared A B, personally known to me to be the identical person whose name is affixed to the foregoing deed [or other instrument] as grantor therein, named and acknowledged the same to be his voluntary act and deed, for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand [and the seal of my office] on the day and year first above written.

[*Official seal, if any.*] [*Signature and title.*]

**34.** *Where parties are not personally known.*

[*As in previous form after* *:] personally came A B and C D, both proven to me satisfactorily to be the same identical persons described in and who executed the within conveyance, by the oath of M N, [witness thereto] who, being by me duly sworn, did depose and say: That he resided in ——, in the county of ——; that he was acquainted with the said A B and C D; that he knew them to be the same persons described in and who executed the within conveyance; and thereupon they severally acknowledged, before me, that they executed the same as their voluntary act and deed for the uses and purposes therein mentioned.

In witness, etc.

——o——

## KANSAS.

[Follow forms for Iowa.]

——o——

## KENTUCKY.

**35.** *Acknowledgment within the State.*

STATE OF KENTUCKY, } ss.
County of ——, }

Be it remembered, on this —— day of ——, 18—, before me, M N, [county clerk of the County Court of said county] at ——, personally came A B, [and C B, his wife] to me known to be the person [or persons] described in and who executed the within deed, and [severally] acknowledged that he [or they] executed the same, for the uses and purposes therein mentioned.

Given under my hand and seal of office. M—— N——.

## KENTUCKY—CONTINUED.

[A certificate of acknowledgment taken within the State need not set forth the private examination; but such private examination is necessary out of the State, and then the certificate will be in the following form, which is prescribed by statute:]

36. *Acknowledgment taken without the State.*

COMMONWEALTH [or kingdom] OF ——, } ss.
County [or town, or city, or department, etc.] }

I, A B, [*here give his title*] do certify that this instrument of writing from C D and wife, E F, [or from E F, wife of C D] was this day produced to me by the parties, and the contents and effect of the instrument being explained to the said E F by me, separately and apart from her husband, she thereupon declared that she did freely and voluntarily execute and deliver the same to be her act and deed, and consented that the same might be recorded.

Given under my hand and seal of office. A—— B——

——o——

## LOUISIANA.

37. *Authentic act of sale and wife's renunciation.*

STATE OF LOUISIANA, } ss.
County of ——, }

Be it remembered, that on this —— day of ——, A. D. 18——, before me, M N, a commissioner of the State of Louisiana, duly commissioned and appointed by the governor thereof, for the said county and State of ——, personally came and appeared A B, at present residing at ——, in said county, who declared [*here will follow the conveyance, e. g., thus:*] that in consideration of ——, to him in hand paid by the said Y Z, the receipt whereof is hereby acknowledged, he, the said appearer, does hereby grant, bargain, sell, convey, and confirm unto Y Z, of ——, all [*here insert description of the premises*] TO HAVE AND TO HOLD the same unto the said Y Z, his heirs and assigns forever.

And now personally appeared Mistress C B, of lawful age and wife of said A B, who did declare unto me that it is her wish and intention to release, in favor of the said Y Z, the real estate above referred to from the matrimonial, dotal, paraphernal, and the other rights, and from any claims, mortgages, or privileges to which she is or may be entitled, whether by virtue of her marriage with her said husband, or otherwise. Whereupon, I, the said commissioner, did inform the said wife, verbally, apart and out of the presence of her said husband, and before receiving her signature, that she had, by the laws of the State of Louisiana, a legal mortgage on the property of her said husband: first, for the restitution of her dowry, and for the reinvestment of the dotal property sold by her

LOUISIANA—CONTINUED.

husband, and which she brought in marriage, reckoning from the celebration of the marriage; second, for the restitution and reinvestment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened, or the succession perfected; thirdly, for nuptial presents; fourthly, for debts by her contracted with her said husband; and fifthly, for the amount of her paraphernal property alienated by her, and received by her said husband, or otherwise disposed of for the individual interest of her said husband.

And the said wife did thereupon declare unto me, commissioner, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal, and other rights and privileges thus secured to her by the laws of the said State of Louisiana, in the property of her said husband; and that, availing herself of the rights secured to her by the second section of an act passed by the legislature of the said State of Louisiana, authorizing wives to make valid renunciation, etc., approved on the 27th day of March, 1835, she, nevertheless, did persist in her intention of renouncing not only all the rights, claims, and privileges hereinbefore enumerated and described, but all others, of any kind or nature whatsoever, to which she is or may be entitled by any law now or heretofore in force in the said State of Louisiana. And the said husband, being now present, aiding and authorizing his said wife in the execution of these presents, she, the said wife, did again declare that she did, and doth hereby, make a formal renunciation and relinquishment of all her said matrimonial, dotal, paraphernal, and other rights, claims, and privileges, in favor of the said Y Z, binding herself and her heirs, at all times, to sustain and acknowledge, at all times, the validity of this renunciation.

Thus done and passed in my office, in the said city of ——, in the presence of O P and Q R, competent witnesses, who hereunto subscribe their names, together with the said appearers and me, commissioner, on the —— day of ——, A. D. eighteen hundred and

[*Signatures of parties, of witnesses, and of officer, and his title and official seal.*]

38. *Acknowledgment of private act.*

STATE OF LOUISIANA, } ss.
County of ——, }

Be it remembered, that on the —— day of ——, in the year one thousand eight hundred and ——, before me, M N, a commissioner, resident in the city of ——, duly commissioned and qualified by the executive authority, and under the laws of the State of Louisiana, to take acknowledgments of deeds, etc., to be used or recorded therein, personally appeared A B, to me known to be the individual named in and who executed the above [or foregoing] conveyance, [or instrument] and acknowledged to me that he did sign, seal, and

## LOUISIANA—CONTINUED.

deliver the same as his free act and deed, on the day and year therein mentioned, and for the consideration, uses, and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year aforesaid.

[*Official seal.*] [*Signature and title.*]

—o—

## MAINE.

**39.** *Acknowledgment by grantor.*

STATE OF MAINE, }
County of ——, } ss.
Town of ——, }

—— day of ——, 18——. Then personally appeared A B, [and C B, his wife] the persons [or one of the persons] described in and who executed the foregoing instrument, and [severally] acknowledged that he [or they] did sign and seal the same as his [or their] free act and deed, before me. [*Signature and title.*]

[*Seal, if any.*]

[There is no private acknowledgment required from the wife, nor, it may here be said, in any of the New England States, except in Rhode Island.]

—o—

## MARYLAND.

**40.** *Acknowledgment within the State.*

STATE OF MARYLAND, }
County of ——, } ss.

I hereby certify that, on this —— day of ——, in the year ——, before the subscriber, [*here state style of the officer taking the acknowledgment*] personally appeared A B, and acknowledged the foregoing deed to be his act. [*Signature and title.*]

**41.** *Acknowledgment by husband and wife.*

STATE OF MARYLAND, }
County of ——, } ss.

I hereby certify that, on this —— day of ——, in the year ——, before the subscriber, [*here insert the official style of the judge taking the acknowledgment*] personally appeared A B and C B, his wife, and did each acknowledge the foregoing deed to be their respective act. [*Signature and title.*]

## MARYLAND—CONTINUED.

**42.** *Acknowledgment taken without the State.*

STATE OF ——, } ss.
County of ——, }

[*As in Form 40, except the attestation will be as follows:*]
In testimony whereof, I have caused the seal of the Court to be affixed, [or have affixed my official seal] this —— day of ——, 18——. [*Signature, title, and seal.*]

[The preceding forms are given in the statute; but it is provided that "any form of acknowledgment, containing in substance the foregoing forms, shall be sufficient." Maryland Code, (1860) Art. 24, Secs. 66–69.]

——o——

## MASSACHUSETTS.

**43.** *Acknowledgment within the State.*

COMMONWEALTH OF MASSACHUSETTS, } ss. [*Date.*]
County of ——, }

Then personally appeared the within [or above] named A B, [and C B his wife] and acknowledged the foregoing instrument to be his [or their] free act and deed before me.
[*Signature and title.*]

**44.** *Acknowledgment by attorney in fact.*

COMMONWEALTH OF MASSACHUSETTS, } ss. [*Date.*]
County of ——, }

Then A B, above mentioned to be the attorney of C D, above named, personally appeared and acknowledged the above instrument to be the free act and deed of the said C D; and that in subscribing the name and affixing the seal of the said C D to the above instrument, he, the said A B, acted freely, and without any manner of duress. Before me,
[*Signature and title.*]

**45.** *Acknowledgment without the State.*

STATE OF ——, } ss.
County of ——, }

I, M N, a commissioner for the Commonwealth of Massachusetts, residing at ——, in the county of —— and State of ——, do certify that on the —— day of ——, in the year A. D. 18——, the above named A B personally appeared before me at ——, in the county and State aforesaid, and acknowledged the foregoing instrument, by him signed, to be his free act and deed.

## MASSACHUSETTS—CONTINUED.

In witness whereof, I have hereto set my hand and affixed my official seal, at ——, in the county of —— and State of ——, on this —— day of ——, 18——. [*Signature and title.*]
[*Official seal.*]

[This form is prescribed by the executive department of the State of Massachusetts, for commissioners resident in other States.]

## MICHIGAN.

46. *Acknowledgment within the State.*

STATE OF MICHIGAN, } ss.
County of ——; }

Be it remembered, that on this —— day of ——, 18——, at ——, before me, M N, [a justice of the peace in and for said county] personally came the within named A B, personally known to me to be the person described in and who executed the within conveyance, [or instrument] and acknowledged the same to be his free act and deed. [*Signature and title.*]

47. *Acknowledgment by husband and wife.*

STATE OF MICHIGAN, } ss.
County of ——, }

Be it remembered, that on this —— day of ——, 18——, at ——, before me, M N, [a justice of the peace in and for said county] personally came the within named A B, and C B, his wife, personally known to me to be the persons described in and who executed the within instrument, and acknowledged the same to be their free act and deed; and the said C B, wife of the said A B, on a private examination before me, separately and apart from her said husband, acknowledged that she executed the same freely, and without any fear or compulsion from any one. [*Signature and title.*]

48. *Acknowledgment of deed by corporation.*

STATE OF ARKANSAS, } ss.
County of ——, }

On this —— day of ——, A. D. 18—, before me, [*style of officer*] personally appeared A B, known to me to be the president of the M N Company, and C D, known to me to be the secretary of said company, and they severally acknowledged the execution of the foregoing instrument of writing to be the free act and deed of the said company. And I further certify that I know the seal affixed to said instrument to be the corporate seal of the said company.
[*Signature and title.*]

MICHIGAN—CONTINUED.

[If taken without the State, insert, "In witness," etc. Compare this form for acknowledgment by a corporation with those given for California, Delaware, and New York.]

—o—

## MINNESOTA.

**49.** *Acknowledgment by grantor.*

STATE OF MINNESOTA, } ss.
County of ——, }

Be it remembered, that on the —— day of ——, 18——, before the undersigned came A B, [and C D] to me known to be the identical person [or persons] described in and who executed the foregoing deed, and [severally] acknowledged that he [or they] executed the same freely and voluntarily, for the uses and purposes therein expressed. [*Signature and title.*]

**50.** *Proof by a subscribing witness before a Court of Record within the State.*

STATE OF MINNESOTA, } ss.
County of ——, }

Be it remembered, that on this —— day of ——, 18——, it appearing to the Court that A B, the grantor in the within [or annexed] deed to Y Z, bearing date the —— day of ——, 18——, has died, [or departed from this State, or resides out of this State, as the case may be] not having acknowledged the execution of such deed, M N, a competent subscribing witness to said deed, appeared in open Court, and, being duly sworn according to law, deposed and said: That he is the identical person of that name who attested the said deed as a subscribing witness; that he saw the said A B duly execute the said deed for the purposes therein stated, and that he, the said M N, and O P, the other subscribing witness to said deed, then and there subscribed the same as witnesses in the presence of said A B, and in the presence of each other.

In testimony whereof, I, G H, clerk of said Court, which is a Court of Record, have hereunto set my hand and affixed the seal of said Court, this —— day of ——, 18——.

[*Seal of Court.*] [*Signature.*] Clerk of —— Court.

—o—

## MISSISSIPPI.

**51.** *Acknowledgment by grantor.*

STATE OF MISSISSIPPI, } ss.
County of ——, }

On this —— day of ——, 18——, personally appeared before me, [*giving name and title of officer*] the above-named [or within-

MISSISSIPPI—CONTINUED.

named] A B,* who acknowledged that he signed, sealed, and delivered the foregoing deed, on the day and year therein mentioned, as his voluntary act and deed. Given under my hand [and seal] this —— day of ——, A. D. one thousand eight hundred and ——.
[*Seal, if any.*] [*Signature and title.*]

52. *Acknowledgment by husband and wife.*

[*As in the foregoing form to the* *, *continuing:*] and C B, his wife, who severally acknowledged that they signed, sealed, and delivered the foregoing deed, on the day and year therein mentioned, as their voluntary act and deed. And the said C B, upon a private examination before me, apart from her husband, previously acknowledged that she signed, sealed, and delivered the same as her voluntary act and deed, freely, without any fear, threats, or compulsion of her husband.

Given, etc. [*as in the preceding form*].

—o—

## MISSOURI.

53. *Acknowledgment by grantor.*

STATE OF MISSOURI, } ss.
County of ——, }

Be it remembered, that A B, who is personally known to the undersigned, a justice of the peace within and for said county [*or other officer, as the case may be*] to be the person whose name is subscribed to the within [or foregoing] deed [or instrument of writing] as a party thereto, this day appeared before me, and acknowledged that he executed and delivered the same as his voluntary act and deed, for the uses and purposes therein contained.

Given under my hand, [and seal of office] this —— day of ——, 18——. [*Signature and title.*]
[*Seal, if any.*]

54. *Acknowledgment when grantor not personally known.*

STATE OF MISSOURI, } ss.
County of ——, }

Be it remembered, that on this —— day of ——, 18 ——, at ——, A B personally appeared before the undersigned, a justice of the peace within and for said county; and C D and E F, two witnesses, having been by me first duly sworn, deposed and said: That the said A B is the person whose name is subscribed to the within [or foregoing] deed [or instrument of writing] as a party thereto; and the said A B then and there acknowledged that he executed and de-

## MISSOURI—CONTINUED.

livered the same as his voluntary act and deed, for the uses and purposes therein mentioned.

Given, etc. [*as in the preceding form*].

55. *By husband and wife to extinguish dower.*

STATE OF MISSOURI, } ss.
County of ——, }

Be it remembered, that A B and C B, his wife, who are personally known to the undersigned, a justice of the peace within and for said county, [or other officer, as the case may be] to be the persons whose names are subscribed to the within [or foregoing] deed [or instrument in writing] as parties thereto, this day appeared before me, and acknowledged that they executed and delivered the same as their voluntary act and deed, for the uses and purposes therein contained. And the said C B, being by me made acquainted with the contents of said deed, [or instrument] acknowledged, on an examination apart from her said husband, that she executed the same, and relinquishes her dower on the real estate mentioned, freely, and without compulsion or undue influence of her said husband.

Given, etc. [*as in Form 53*].

[The same form may be used when husband and wife execute a deed to convey the wife's separate property, but omit "and relinquishes her dower in the real estate mentioned."]

## NEBRASKA.

[The forms given for Iowa may be used; and, as in Iowa, no private examination of married women is necessary.]

## NEVADA.

[The forms are substantially the same as those for California; and, as in that State, a private acknowledgment is required from married women.]

## NEW HAMPSHIRE.

56. *Acknowledgment within the State.*

STATE OF NEW HAMPSHIRE, } ss.
County of ——, }

On the —— day of ——, 18——, the above [or within] named A B [and C B, his wife] personally appeared, and acknowledged

## NEW HAMPSHIRE—CONTINUED.

the above [or within] written instrument by him [or them] subscribed, to be his [or their] free and voluntary act and deed * before me. [*Signature and title.*]

**57.** *Acknowledgment without the State.*

[*As in the preceding form to the *, then the following:*] Before me, M N, a justice of the peace, [or a notary public, or other officer] in and for the State and county [and town] aforesaid.
[*Seal, if any.*] [*Signature and title.*]

—o—

## NEW JERSEY.

**58.** *Acknowledgment within the State.*

STATE OF NEW JERSEY, } ss.
County of ——, }

Be it remembered, that on this —— day of ——, 18—— before me [*giving name and title of officer*] came A B, who I am satisfied is the grantor mentioned in the foregoing deed, [or instrument] and, I having first made known to him the contents thereof, he acknowledged that he signed, sealed, and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.
[*Signature.*]

**59.** *Acknowledgment by husband and wife.*

STATE OF NEW JERSEY, } ss.
County of ——, }

Be it remembered, that on this —— day of ——, 18——, before me, [*giving name and title of officer*] personally came A B, and C B, his wife, who I am satisfied are the grantors mentioned in the foregoing deed, [or instrument] and, I having first made known to them the contents thereof, they acknowledged that they signed, sealed, and delivered the same as their voluntary act and deed, for the uses and purposes therein mentioned. And the said C B, being by me examined, privately and apart from her husband, previously acknowledged that she signed, sealed, and delivered the same as her voluntary act and deed, freely, and without any fear, threats, or compulsion of her husband. [*Signature.*]

**60.** *Acknowledgment of deed by a corporation.*

STATE OF NEW JERSEY, } ss.
County of ——, }

Be it remembered, that on this —— day of ——, 18——, before me, [*giving name and title of officer*] personally came A B, who is,

## NEW JERSEY—CONTINUED.

I am satisfied, the cashier of the —— bank at ——, who, being by me duly sworn, did depose and say: That he knows the corporate seal of said bank, and that the seal affixed to the foregoing conveyance [or instrument] is the corporate seal of said bank; and that the said seal was affixed to the said conveyance [or instrument] by order of the directors of said bank; that C D is the president of said bank, and did sign the said conveyance [or instrument] by order of the said directors, in deponent's presence, and that he, this deponent, by like order, did sign his name thereto as the cashier of said bank. [*Signature.*]

**61.** *Acknowledgment without the State.*

STATE OF ——, } ss.
County of ——, }

Be it remembered, that on this —— day of ——, 18——, before the subscriber, a commissioner for the State of New Jersey, for taking the acknowledgment and proof of deeds, personally came A B, [and C B, his wife] known to me [or proven to my satisfaction] to be the grantor [or grantors] in the within conveyance [or instrument] named; and, the contents thereof being by me first made known to him, he acknowledged that he [or to them, they acknowledged that they] signed, sealed, and delivered the same as his [or their] voluntary act and deed. [And the said C B, being by me examined, privately and apart from her husband, acknowledged that she signed, sealed, and delivered the same freely, without any fear, threat, or compulsion of her said husband.] All of which I certify under my hand and official seal. [*Signature and title.*]
[*Official seal.*]

—o—

## NEW MEXICO.

**62.** *Acknowledgment by husband and wife.*

TERRITORY OF NEW MEXICO, } ss.
County of ——, }

Be it remembered, that on this —— day of ——, 18——, before me, [*naming Court or officer, with his title*] personally came A B and C B, his wife, personally known to me as the persons executing the within, [or foregoing instrument] and severally acknowledged that they executed the same for the purposes therein mentioned. And the said C B, being first by me informed of the contents of the instrument, did confess, upon an examination independent of her husband, that she executed the same voluntarily and without the compulsion or illicit influence of her husband.
[*Official seal.*] [*Signature and title.*]
[The form for a single grantor is the usual one.]

## NEW YORK.

63. *Acknowledgment by grantor known to the officer.*

STATE OF NEW YORK, }
County of ——, } ss.

On this —— day of ——, in the year 18——, before me personally came A B, to me known to be the individual described in and who executed the within [or above, or annexed] conveyance, [or instrument] and acknowledged that he executed the same for the purposes therein mentioned. [*Signature and title.*]

64. *By grantor not known to the officer.*

STATE OF NEW YORK, }
County of ——, } ss.

On this —— day of ——, in the year 18——, before me personally came A B, proven to me satisfactorily to be the individual described in and who executed the within [or above, or annexed] conveyance, [or instrument] by the oath of M N, who, being by me duly sworn, [or affirmed] did depose and say: That he resided in the city of ——, in the county of ——; that he was acquainted with the said A B, and that he knew him to be the same person described in and who executed the within conveyance, [or instrument] and thereupon the said A B acknowledged before me that he executed the same for the purposes therein mentioned.

[*Signature and title.*]

65. *By husband and wife known to the officer.*

STATE OF NEW YORK, }
County of ——, } ss.

On this —— day of ——, in the year 18——, before me personally came A B, and C B, his wife, to me known to be the individuals described in and who executed the within [or above, or annexed] conveyance, [or instrument] and severally acknowledged that they executed the same for the purposes therein mentioned. And the said C B, on a private examination by me made apart from her husband, acknowledged that she executed the same freely, and without any fear or compulsion of her said husband.

[*Signature and title.*]

66. *By husband and wife resident without the State.*

STATE OF ——, }
County of ——, } ss.

On this —— day of ——, in the year 18——, before me personally came A B, and also C B, his wife, who reside at ——, in the

## NEW YORK—CONTINUED.

State of ——, and who executed the within [or above, or annexed] conveyance, [or instrument] and severally acknowledged that they executed the same for the purposes therein mentioned.

[*Signature and title.*]

67. *By an attorney in fact, known to the officer.*

STATE OF NEW YORK, }
County of ——, } ss.

On this —— day of ——, in the year 18——, before me personally came A B, the attorney of C D, known to me to be the individual described in, and who, as such attorney, executed the within [or above, or annexed] conveyance, [or instrument] and acknowledged that he executed the same as the act and deed of C D, therein described, and for the purposes therein mentioned, by virtue of a power of attorney, duly executed by the said C D, bearing date the —— day of ——, in the year 18——, [and recorded in the office of the register, in and for the city and county of ——, on the —— day of ——, in the year 18——.]

[*Signature and title.*]

68. *By a sheriff, referee, or receiver.*

STATE OF NEW YORK, }
County of ——, } ss.

On this —— day of ——, in the year 18——, before me personally came A B, sheriff of the county of ——, [or late sheriff of the county of ——, or referee in the cause within named, or receiver in, etc.] to me known to be the individual described in and who executed the within [or above, or annexed] conveyance, [or instrument] and acknowledged that he executed the same for the purposes therein mentioned. [*Signature and title.*]

69. *Proof by subscribing witness, known to the officer.*

STATE OF NEW YORK, }
County of ——, } ss.

On this —— day of ——, in the year 18——, before me personally came M N, subscribing witness to the within [or above or annexed] conveyance, [or instrument] with whom I am personally acquainted, who, being by me duly sworn, said: That he resided in the city of ——; that he was acquainted with A B, and knew him to be the person described in and who executed the said conveyance, [or instrument] and that he saw him execute and deliver the same; and that he acknowledged to him, the said M N, [*naming witness*] that he executed and delivered the same; and that he, the said M N, thereupon subscribed his name as a witness thereto.

[*Signature and title.*]

## NEW YORK—CONTINUED.

**70.** *Proof of a deed by a corporation signed by the president, cashier, or secretary.*

STATE OF NEW YORK, } ss.
County of ——, }

On this —— day of ——, in the year 18——, before me personally came C D, secretary of the E Insurance Company, of the city of ——, with whom I am personally acquainted, who, being by me duly sworn, said: That he resided in the city of ——; that he was the secretary of the E Insurance Company, of the city of ——; that he knew the corporate seal of the said company; that the seal affixed to the within [or above or annexed] conveyance [or instrument] was such corporate seal; that it was so affixed by order of the Board of Directors of said company, and that he signed his name thereto by the like order as secretary of said company. And the said C D further said: That he was acquainted with A B, and knew him to be the president of said company; that the signature of the said A B, subscribed to the said conveyance, was in the genuine handwriting of the said A B, and was thereto subscribed by the like order of the said Board of Directors, and in the presence of him, the said C D. [*Signature and title.*]

—o—

## NORTH CAROLINA.

**71.** *Acknowledgment within the State.*

STATE OF NORTH CAROLINA, to wit: [*Date.*]

Before me, one of the judges of the Supreme Court, [or other judge or clerk] came A B,* the grantor or vendor in the foregoing deed, and acknowledged the execution thereof for the purposes therein expressed. [*Signature and title.*]

**72.** *By husband and wife.*

[*As in the preceding. After * continue:*] And C B, the bargainors in the foregoing deed, and acknowledged the execution thereof, for the purposes therein expressed; she, the said C B, being first privily examined by me, apart from her said husband, touching the free execution thereof, and acknowledged that she executed the same freely, and of her own accord, without fear or compulsion of her said husband, or any other person whatsoever, and that she voluntarily assents thereto. [*Signature and title.*]

## OHIO.

73. *Acknowledgment within the State.*

STATE OF OHIO, }
County of ——, } ss.

Before me, M N, a justice of the peace in and for said county, [or judge of —— Court, or other officer, as the case may be] personally appeared the within [or above] named A B, and acknowledged the signing and sealing of the within [or above] conveyance [or power of attorney, or mortgage, or lease, or other instrument] to be his voluntary act and deed, this —— day of ——, 18——.

[*Signature and title.*]

74. *By husband and wife.*

STATE OF OHIO, }
County of ——, } ss.

Before me, M N, a justice of the peace in and for said county, [or judge of the —— Court, or other officer, as the case may be] personally appeared the within [or above] named A B, and C B, his wife, and acknowledged the signing and sealing of the within [or above] conveyance [or power of attorney, or mortgage, or lease, or other instrument] to be their voluntary act and deed; and the said C B, being at the same time examined by me, separate and apart from her said husband, and the contents of said deed [or instrument] being made known to her by me, she then declared that she did voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith as her act and deed, this —— day of ——, A. D. 18——. [*Signature and title.*]

75. *By husband and wife without the State.*

STATE OF ——, }
County of ——, } ss.

Before me, M N, a commissioner of the State of Ohio, resident in said State and county, appeared the within [or above] named A B, and C B, his wife, and acknowledged the signing and sealing of the within [or above] conveyance [or power of attorney, or mortgage, or lease, or instrument] to be their voluntary act and deed; and the said C B, being at the same time examined by me, separate and apart from her husband, and the contents of said instrument made known to her by me, she then declared that she did voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith, this —— day of ——, A. D. 18 ——.

[*Seal.*] [*Signature and title.*]

[The preceding form is prescribed for the guidance of commissioners of the State resident in other States. The certificate of

OHIO—CONTINUED.

acknowledgment, if taken within the State must be written on the same paper as the instrument, and a certificate on a separate paper, though it be affixed with a wafer, is void. Winkler *v.* Higgins, 9 Ohio St. 599.]

—o—

## OREGON.

76. *Acknowledgment by grantor known to the officer.*

STATE OF OREGON, } ss.
County of ——, }

On this —— day of ——, in the year 18——, before me personally came A B, to me known to be the individual described in and who executed the within [or foregoing] conveyance, [or bond, or letter of attorney, or instrument in writing] and acknowledged that he executed the same for the uses and purposes therein mentioned. [*Signature and title.*]

—o—

## PENNSYLVANIA.

77. *Acknowledgment within or without the State.*

COMMONWEALTH OR STATE OF ——, } ss.
County of ——, }

Be it remembered, that on this —— day of ——, A. D. 18——, before me, the subscriber, a justice of the peace of ——, [or a judge of the Court of ——, or one of the aldermen of the city of ——, or a notary public for the county of ——] personally appeared A B, the grantor in the foregoing indenture [or deed or conveyance] named, and in due form of law acknowledged the said indenture to be his act and deed, and desired that the same, as such, might be recorded according to law. [*Signature and title.*]

[*Seal.*]

78. *By husband and wife.*

COMMONWEALTH OR STATE OF PENNSYLVANIA, } ss.
County of——, }

Be it remembered, that on this —— day of ——, 18——, before me, [*name and style of officer*] personally came A B and C B, his wife, and severally acknowledged the above deed [or conveyance] to be their act and deed, and desired that the same might be recorded as such; and the said C B, being of lawful age, on a private examination by me, separate and apart from her husband, the contents of said deed being first made fully known to her, declared that she did voluntarily, and of her own free will and accord, and as her own free act and deed, deliver the said deed [or conveyance] without any coercion or compulsion of her said husband.

## PENNSYLVANIA—CONTINUED.

In testimony whereof, I have hereunto set my hand and seal the day and year last above named. [*Signature and title.*]
[*Seal.*]

**79.** *Acknowledgment of corporation.*

COMMONWEALTH OR STATE OF PENNSYLVANIA, } ss.
County of ——, }

Be it remembered, that on this —— day of ——, 18——, before me, [*name and style of officer*] personally came the above named A B, president of the above named corporation, who, being duly sworn, deposes and says: That he was personally present at the execution of the above written indenture, [or other instrument] and saw the common seal of the said [*naming the corporation*] duly affixed thereto; and that the seal so affixed is the common and corporate seal of the said ——; and that the above written indenture [or other instrument] was duly sealed and delivered by him, as and for the act and deed of the said corporation of the ——, for the uses and purposes therein mentioned; and that the name of this deponent, subscribed to said deed as the president of said corporation, in attestation of the due execution and delivery of said deed, is of this deponent's proper handwriting.

[*Signature of deponent.*]

Sworn and subscribed before me, this —— day of ——, 18——,
[*Signature, title, and seal of officer.*]

——o——

## RHODE ISLAND.

**80.** *Acknowledgment within the State.*

STATE OF RHODE ISLAND, the —— day of ——, 18——.
Providence, to wit: Then personally appeared the within-named A B, and acknowledged the within instrument to be his free voluntary act and deed, hand and seal before me.

[*Signature and title.*]

**81.** *The same by husband and wife.*

[*As in the preceding form, adding as follows:*] And afterward on the same day came C B, wife of the said A B, and was by me examined, privily and apart from her said husband, when the said above written instrument, by her subscribed, was shown and explained to her by me, when she declared to me that the same was her free voluntary act and deed, hand and seal, and that she did not wish to retract the same. [*Signature and title.*]

[*In case of a relinquishment of dower, insert after* "hand and seal," "in release of her dower interest in the lands therein mentioned."]

## RHODE ISLAND—CONTINUED.

82. *Acknowledgment without the State.*

STATE OF ——, } ss.
County of ——, }

Be it remembered, that on the —— day of ——, in the year one thousand eight hundred and ——, before me, the undersigned, M N, a commissioner resident in ——, duly commissioned and qualified by the executive authority, and under the laws of the State of Rhode Island, to take the acknowledgments of deeds, etc., to be used or recorded therein, personally appeared [etc., *continuing as in preceding forms*].

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year aforesaid.

[*Seal.*] [*Signature and title.*]

—o—

## SOUTH CAROLINA.

83. *Proof by subscribing witness.*

STATE OF SOUTH CAROLINA, } ss.
District [or County] of ——, }

Be it remembered, that on this —— day of ——, 18——, before me, [*giving name and style of officer*] personally appeared M N, with whom I am personally acquainted, and made oath that he saw the within named A B sign, seal, and as his act and deed, deliver the within deed for the uses and purposes therein mentioned; and that he [with O P, in the presence of each other] subscribed his name as a witness of the due execution thereof.

Sworn to before me, this —— day of —— [as witness my hand and official seal]. [*Signature and title.*]

[*Seal.*]

[It is usual to prove within the State by a witness as in the foregoing; but when acknowledged by the grantor, any of the ordinary forms may be used. The following form is prescribed. Rev. Stat. (1873) p. 430.]

84. *Acknowledgment of release of dower.*

STATE OF SOUTH CAROLINA, } ss.
District [or County] of ——, }

I, J P, [*giving name and official title of officer*] do hereby certify unto all whom it may concern, that C B, the wife of the within named A B, did this day appear before me, and, upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release, and forever relinquish unto the within named Y Z, his heirs and assigns, all her

## SOUTH CAROLINA—CONTINUED.

interest and estate, and also all her right and claim of dower of, in, or to all and singular the premises within mentioned and released. Given under my hand and seal, this —— day of ——, A. D. one thousand eight hundred and ——. [*Signature of wife.*]

[*Signature, title, and seal of officer.*]

——o——

## TENNESSEE.

85. *Acknowledgment by husband and wife.*

STATE OF TENNESSEE, } ss.
County of ——, }

On this —— day of ——, 18——, at ——, personally appeared before me, [*giving name and title of officer*] the within named bargainor, with whom I am personally acquainted, and who acknowledged that he executed the within instrument, for the purposes therein contained. And C B, the wife of the said A B, having appeared before me privately and apart from her husband, the said C B acknowledged the execution of the said deed to have been done by her freely, voluntarily, and understandingly, without compulsion or constraint from her said husband, and for the purposes therein expressed.

Witness my hand and seal, the day and year first above written.

[*Seal.*] [*Signature and title.*]

[The form for a single grantor is the same as the above, leaving out the sentence beginning, "And C B," etc. The seal is unnecessary if the acknowledgment be made before a judge, but in such case there must be annexed a certificate to the judge's official character, which may be by the clerk under the seal of the clerk, or, if he have none, under his private seal.]

——o——

## TEXAS.

86. *Acknowledgment of married woman.*

STATE OF TEXAS, } ss.
County of ——, }

Before me, ——, judge of [or notary public of] —— County, personally appeared C B, wife of A B, parties to a certain deed or writing, bearing date the —— day of ——, and hereto annexed, and having been examined by me privily and apart from her husband, and having the same fully explained to her, the said C B acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it, to certify which I hereto sign my name and affix my seal, this —— day of ——, A. D. ——.

[*Signature and seal.*]

TEXAS—CONTINUED.

[This form is prescribed by the statute. Paschal's Dig. Art. 1003. The form for a single grantor is the same as that in New York. The certificate must in all cases be under seal.]

## VERMONT.

87. *Acknowledgment by grantor.*

STATE OF VERMONT, } ss.
County of ——, }

The —— day of ——, 18——. Then personally appeared A B, [and C B, his wife] to me known, and [severally] acknowledged the within instrument by him [or them] signed and sealed, to be his [or their] free act and deed, before me.

[*Signature and title.*]

88. *Acknowledgment by agent of a corporation.*

STATE OF VERMONT, } ss.
County of ——, }

The —— day of ——, 18——. Then personally appeared A B, within named, to be the agent of the within named C D Company, and acknowledged the within instrument to be the free act and deed of the said C D Company. [*Signature and title.*]

[The last form is held sufficient in McDaniels *v.* Flower Brook Manfg. Co. 22 Vt. 274.]

## VIRGINIA.

89. *Acknowledgment within or without the State.*

STATE OF ——, } ss.
County of ——, }

I, M M, a commissioner appointed by the Governor of the State of Virginia for the State of ——, [or within the State, or a notary public for the county of ——] do hereby certify that * A B, whose name is signed to the writing above, bearing date on the —— day of ——, 18——, has acknowledged the same before me at —— [or before me in my county].

Given under my hand and official seal, this —— day of ——, 18——. [*Signature and title.*]

[*Seal, if any.*]

## VIRGINIA—CONTINUED.

**90.** *Acknowledgment by a married woman.*

[*As in the preceding form to the* *, *then continue*:] and C B, the wife of A B, whose names are signed to the writing above, bearing date the —— day of ——, 18——, personally appeared before me, and being examined by me privily and apart from her husband, and having the writing aforesaid fully explained to her, she, the said C B, acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract it.

Given under my hand or official seal, this —— day of ——, one thousand eight hundred and ——. [*Signature and title.*]

[*Seal, if any.*]

—o—

## WASHINGTON TERRITORY.

**91.** *Acknowledgment by husband and wife.*

TERRITORY OF WASHINGTON, } ss.
County of ——, }

On this —— day of ——, 18——, before me, [*here give name and title of officer*] personally came A B, and C B, his wife, to me known to be the individuals described in and who executed the within [or foregoing] conveyance, and severally acknowledged that they signed, sealed, and delivered the same as their free act and deed, for the uses and purposes therein mentioned; and the said C B, upon an examination by me, separate and apart from her husband, acknowledged that she did voluntarily, of her own free will, and without the fear of or coercion from her husband, execute the deed.

Witness my hand, [and official seal] the day and year first above written. [*Signature and title.*]

[*Seal, if any.*]

[The form for the acknowledgment of a single grantor is the usual one.]

—o—

## WEST VIRGINIA.

**92.** *Acknowledgment by grantor.*

STATE, [or TERRITORY, or DISTRICT] OF WEST VIRGINIA, } ss.
County of ——, }

I, ——, [*name and style of officer*] do certify that ——, whose name [or names] is [or are] signed to the writing above, [or hereto annexed] bearing date on the —— day of ——, has [or have] this day acknowledged the same before me, in my said ——.

Given under my hand, this —— day of ——.

[*Signature and title.*]

## WEST VIRGINIA—CONTINUED.

[This form is prescribed by the Code of West Virginia, p. 469. The form for the acknowledgment of a married woman is the same as that for Virginia.]

—o—

## WISCONSIN.

93. *Acknowledgment by grantor.*

STATE OF WISCONSIN, } ss.
County of ——, }

Be it remembered, that on this —— day of ——, 18——, before me, [*giving name and title of officer*] personally came the within named A B, [and C B, his wife] to me known to be the identical person [or persons] described in and who executed the within deed, [or mortgage, or other instrument] and acknowledged the same to be his [or their] free act and deed, for the uses and purposes therein mentioned.

[*If without the State, add:*] In testimony whereof, I have hereunto set my hand and seal, the day and year first above written.

[*Seal.*] [*Signature and title.*]

[Two subscribing witnesses are necessary to a deed. A deed executed out of the State may be executed according to the laws of the place where it is executed; but if executed in the United States, and not acknowledged before a Wisconsin commissioner, there must be annexed a certificate by a clerk of a Court of Record, to the authority and signature of the officer, and to the fact that the deed is executed and acknowledged in conformity with the laws of the place.]

—o—

## CANADA.

94. *Form of acknowledgment in Lower Canada.*

(Province of Quebec.)

On the —— day of ——, A. D. one thousand eight hundred and seventy ——, before me, A B, of ——, [a justice of the peace for the county of ——, or mayor of ——, or a notary public duly appointed and sworn for ——] personally came and appeared C D, the person who executed the foregoing deed, [power of attorney, or other instrument] and to me well-known as such, who then and there acknowledged that he had executed the same.

Witness my hand and seal at ——, on the day and year first above written. A—— B——. [*Seal.*]

[The execution of deeds of lands situated in this province by parties residing in the United States will be valid if executed according to the laws or custom of the locality where executed. If

CANADA—CONTINUED.

executed in presence of witnesses, one or all of such witnesses must make an affidavit of the authenticity of the signatures before the mayor or chief magistrate of the locality, who must give a certificate to that effect, which certificate should then be authenticated by the nearest British consul. All such matters, as the number of witnesses, seals, etc., may be governed by the laws of the place of execution. If the authenticity of any such deed is questioned, it must be proved by evidence taken at the place of its execution by a commissioner appointed by the Court.]

**85.** *Form of acknowledgment in Upper Canada.*

(Province of Ontario.)

*Proof by subscribing witness.*

STATE OF ——, } ss.
County of ——, }

I, [*here insert name, residence, additional occupation or calling of the subscribing witness in full*] make oath and say: 1. That I was present and did see the within [or annexed] deed [mortgage or other instrument] and a duplicate thereof [*if the fact*] duly executed, signed, sealed, and delivered, by A B and C D, the parties [or two of the parties] thereto. 2. That the said instrument and duplicate were executed at ——. 3. That I know the said parties so executing the said instrument. 4. That I am a subscribing witness to the said execution of the said instrument and duplicate.

[*Signed*] E—— F——.

I, G H, of, etc., a notary public within and for ——, [or a judge or mayor, etc.] do hereby certify that the above named affidavit was duly taken, subscribed, and sworn to before me by the above named E F, on the —— day of ——, A. D. 18——, at the —— of ——, in the State of ——.

In testimony whereof, I have hereunto set my hand and affixed my official seal, the day and year last aforesaid.

[*Signature and title.*]

[Proof of deeds, mortgages, etc., for registration, is to be made by affidavit on the instrument, or securely attached to it, as follows: Within the Province, before any commissioner for taking affidavits, before the registrar of deeds or his deputy, or before a judge of any of the Superior Courts, or a County Court. In Great Britain, before a judge of the Superior Courts, or of a County Court, or the mayor or chief magistrate of any city, borough, or town corporate, certified under the common seal of such city, etc., or a commissioner appointed for taking affidavits in any of the Courts of Record of the Province. In any foreign country [as in the United States] before the mayor of any city, borough, or town corporate, certified under the common seal; or before any British consul or

CANADA—CONTINUED.

vice-consul resident in such country; or before a judge of Court of Record, or a notary public, certified under his official seal.

If different parties sign before different subscribing witnesses, each witness must make an affidavit as to the execution by the parties whose execution he attests, or the deed cannot be registered.]

# FORMS OF AFFIDAVITS.

## VERIFICATION OF PLEADING.

**96.** *As used in New York.*

County of New York, } ss.
City of New York, }

George Reed, of said city, being duly sworn, says: That he is the plaintiff [or defendant] in the above entitled action; that the foregoing complaint [or answer, or reply] is true to his own knowledge, except as to those matters stated therein on information and belief, and as to those matters he believes it to be true.

George Reed.

Sworn to before me this —— day of ——, 18——.

Holland Smith,
Notary Public.

**97.** *As used in California.*

City and County of San Francisco, ss.

George Reed, being duly sworn, deposes and says: That he is the plaintiff [or defendant] in the above entitled action; that he has read [or heard read] the foregoing complaint, [or answer, or reply] and knows the contents thereof, and the same is true of his own knowledge, except as to those matters therein stated on his information and belief, and as to those matters he believes it to be true.

George Reed.

Subscribed and sworn to before me this —— day of ——, 18——.
[*Seal.*]

Holland Smith,
Notary Public.

[A party who swears to the truth of a pleading, thereby affirms a knowledge of its contents, even though his affidavit does not contain the statement that he has read or heard it read, and knows the contents thereof. Patterson *v.* Ely, 19 Cal. 28.]

**98.** *By two parties not united in interest.*

City and County of ——, ss.

James Jackson and John Jones, being severally duly sworn, each for himself deposes and says: That he is one of the above named

plaintiffs [or defendants]; that he has read [or heard read] the foregoing complaint, [or answer, or reply] and knows the contents thereof, and the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true. JAMES JACKSON,
JOHN JONES.

Subscribed and sworn to before me this —— day of ——, 18——.
HOLLAND SMITH,
Notary Public.

**99.** *Verification by an attorney or agent.*

[The codes of procedure, in the modern practice, provide for the verification of a pleading by the attorney in fact or agent of a party who is absent from the county where the pleading is verified, when such attorney or agent has knowledge of the facts, enabling him to make the verification.]

STATE OF ——, } ss.
County of ——, }

James Reed, being duly sworn, deposes and says [*the word "deposes" is generally inserted in California*]: That he resides in the [city and] county of ——, and is the agent of the plaintiff [or defendant] in the above entitled action; that he has read [or heard read] the foregoing complaint, [or answer, or reply] and knows the contents thereof, and the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true; that the said plaintiff [or defendant] is absent from the [city and] county of ——, where his attorney resides; and the facts are within the knowledge of this affiant.

[*In New York, and some other States, it is the practice to state, after this, the grounds of the deponent's knowledge, but this is not required in California.*] JAMES REED.

Subscribed and sworn to before me this —— day of ——, 187——.
HOLLAND SMITH,
Notary Public.

**100.** *By agent or attorney who holds note or bond.*

STATE OF ——, } ss.
County of ——, }

James Reed, being duly sworn, deposes and says: That he is the attorney [or agent] of the plaintiff in the above entitled action, for the purpose of collecting the amount sued for therein; that the foregoing complaint is true of his own knowledge, [*of course, it is unnecessary to say the attorney read the complaint, if he has drawn it*] except as to those matters therein stated on information and belief, and as to those matters he believes it to be true; that the reason this verification is not made by the said plaintiff is that the

action is founded upon a written instrument for the payment of money only, and such instrument is in the possession of deponent; from which said instrument and statements made by the plaintiff to deponent, deponent's knowledge and belief are derived.

JAMES REED.

Subscribed and sworn to before me this —— day of ——, 187——.

HOLLAND SMITH,
Notary Public.

——o——

## FORMS FOR PROOF OF CLAIMS.

**101.** *Deposition for proof of debt in bankruptcy without security.*

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE —— DISTRICT OF ——.

In the Matter of
RICHARD ROE,
Bankrupt. } *In Bankruptcy.*

—— District of ——, ss.

Be it remembered, that at ——, in the county of —— and State of ——, on the —— day of ——, A. D, 18——, before me, Holland Smith, a notary public for the State of California, residing in the city of San Francisco, and duly commissioned and sworn, personally came James Reed, of ——, in the county of —— and State of ——, and made oath and says: That the said Richard Roe, the person against whom a petition for adjudication of bankruptcy has been filed, at and before the filing of the said petition, was and still is justly and truly indebted to this deponent in the sum of —— dollars, for and on account of [*here insert a particular account of the indebtedness*] which is the true consideration for said indebtedness, no part of which has been paid; for which said sum of —— dollars, or any part thereof, this deponent says that he has not, nor has any person by his order, or to this deponent's knowledge or belief, for his use, had or received any manner of satisfaction or security whatsoever, nor has any note, or other evidence of indebtedness, ever been given for the same.

And this deponent further says: That the said claim was not procured for the purpose of influencing the proceedings under the Act of Congress, entitled, "An Act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867; that no bargain or agreement, express or implied, has been made or entered into, by or on behalf of this deponent, to sell, transfer, or dispose of said claim, or any part thereof, against said bankrupt; or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of this deponent for assignee, or any action on the part of this deponent, or

any other person in the proceedings under this act, has been, is, or shall be in any way affected, influenced, or controlled.

JAMES REED,
Deposing Creditor.

Subscribed and sworn to before me, this —— day of ——, 187—.
[*Seal.*] HOLLAND SMITH,
Notary Public.

**102.** *Deposition of proof of debt with security.*

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE —— DISTRICT OF ——.

In the matter of
RICHARD ROE,
Bankrupt. } *In Bankruptcy.*

District ——, ss.

Be it remembered, that at ——, in the county of —— and State of ——, on the —— day of ——, A. D. 18——, before me, Holland Smith, a notary public for the State of California, residing in the city of San Francisco, and duly commissioned and sworn, personally came James Reed, of ——, in the county of ——, and State of ——, and made oath, and says: That the said Richard Roe, the person against whom a petition for adjudication of bankruptcy has been filed, at and before the filing of the said petition, was, and still is, justly and truly indebted to this deponent [or the firm of Reed & Co., composed of this deponent and James Smith, doing business at ——] in the sum of —— dollars, for which said sum of —— dollars, or any part thereof, this deponent has not, nor has any person by his order, or, to this deponent's knowledge or belief, for his use, had or received any manner of satisfaction or security whatsoever, save and except the notes [or mortgage, etc.] hereinafter mentioned; that the said claim was not procured for the purpose of influencing the proceedings under the act of Congress, entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867; that no bargain or agreement, express or implied, has been made or entered into, by or on behalf of this deponent, to sell, transfer, or dispose of said claim, or any part thereof, against said bankrupt; or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of this deponent, or any other person, in the proceedings under said act, has been, is, or shall be, in any way affected, influenced, or controlled. [*Here insert a particular description of the debt; also, of the security, and the estimated value of property held as security. If there are notes, the originals should be attached.*]

JAMES REED,
Deposing Creditor.

Subscribed and sworn to before me this —— day of ——, 187——.
[*Seal.*] HOLLAND SMITH,
Notary Public.

[An agent or attorney may make proof of debt, and when he does so, after the concluding paragraph add in the forms: "And this deponent further says: That he is duly authorized by his principal to make this affidavit; and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated, and that such debt, to the best of his knowledge and belief, still remains unpaid and unsatisfied." See U. S. Rev. Stat. Sec. 5078. By Act of Congress June 22d, 1874, notaries are authorized to take proof of debts in bankruptcy.]

**103.** *Proof of claim against estates.*

STATE OF ——, } ss.
County of ——, }

James Reed, of the ——, in the county aforesaid, being duly sworn, deposes and says: That the foregoing claim against the estate of Richard Roe, deceased, is justly due and owing this deponent; that no payments have been made thereon which are not credited, and that there are no offsets against the same, to the knowledge of this deponent. JAMES REED.

Subscribed and sworn to before me this —— day of ——, 187—.

HOLLAND SMITH,
Notary Public.

**104.** *Affidavit required of pre-emption claimant under Land Laws of the United States.*

I, ——, claiming the right of pre-emption, under Sec. 2259 of the Revised Statutes of the United States, to the —— quarter of section of number ——, of township number ——, of range number ——, subject to sale at ——, do solemnly swear [or affirm] that I have never had the benefit of any right of pre-emption under said section; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use and benefit; and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whomsoever, by which the title which I may acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except myself.

[*Claimant's signature.*]

I, ——, of the Land Office at ——, do hereby certify that the above affidavit was taken and subscribed before me, this —— day of ——, A. D. 18——. —— ——.

[By Sec. 2262, Rev. Stat. U. S., the claimant is required to make this affidavit before the receiver or register of the land-district in

which the land is situated. And it is the duty of the officer administering such oath, to file a certificate thereof in the public land office of such district, and to transmit a duplicate copy to the General Land Office, either of which shall be good and sufficient evidence that such oath was administered according to law.]

**105.** *Proof by persons of respectability who are acquainted with the claimant.*

We, ——, ——, do solemnly swear that —— [*here state the personal qualifications prescribed in Sec. 2259 of Rev. Stat., that the person is the head of a family, or widow, or single person over the age of twenty-one years, and citizen of the United States, or has filed his intention to become such*] and is an inhabitant of the —— quarter-section, number ——, of township number ——, of range number ——, and that no other person resided upon the said land, entitled to the right of pre-emption. That the said —— entered upon and made settlement in person on the said land since the —— day of ——, 18——, to wit, on the —— day of ——, 18——; and has lived in the said house, and made it his exclusive home, from the —— day of ——, 18——, until the present time. That he did not remove from his own land within the State of ——, to make the settlement above referred to; and that he has since said settlement plowed, fenced, and cultivated about —— acres of said land.

—— ——.

—— ——.

I, ——, do hereby certify that the above affidavit was taken and subscribed before me this —— day of ——, A. D. 18——.

—— ——.

We certify that ——, ——, whose names are subscribed to the foregoing affidavit, are persons of respectability.

—— ——, Register.

—— ——, Receiver.

**106.** *Affidavit for claimant of homestead.*

LAND OFFICE AT ——,
[*Date*] —— 187——.

I, ——, of ——, having filed my application, No. ——, for an entry under Section 2289 of the Revised Statutes of the United States, do solemnly swear that [*here state whether the applicant is the head of a family, or over twenty-one years of age; whether a citizen of the United States, or has filed his declaration of intention of becoming such; or, if under twenty-one years of age, that he has served not less than fourteen days in the army or navy of the United States during actual war; that said application No. —— is made for his or her exclusive benefit; and that said entry is made for*

*the purpose of actual settlement or cultivation, and not directly or indirectly, for the use or benefit of any other person or persons whomsoever*] and that I have not heretofore had the benefit of this act.

Sworn to and subscribed this —— day of ——, before

—— ——.

Register [or Receiver.]

107. *Affidavit for soldier's homestead.*

LAND OFFICE AT ——, }
[*Date*] ——, 187——. }

I, ——, of ——, do solemnly swear that I am a —— of the age of twenty-one years, and a citizen of the United States; that I served for ninety days in Company ——, —— Regiment, United States Volunteers; that I was mustered into the United States military service the —— day of ——, and was honorably discharged therefrom on the —— day of ——; that I have since borne true allegiance to the Government; and that I have made my application, No. ——, to enter a tract of land, under Section 2304 of the Revised Statutes of the United States, giving homesteads to honorably discharged soldiers and sailors, their widows and orphan children; that I have made said application in good faith; and that I take said homestead for the purpose of actual settlement and cultivation, and for my own exclusive use and benefit, and for the use and benefit of no other person or persons whomsoever; and that I have not heretofore acquired a title to a tract of land under the homestead laws, or voluntarily relinquished or abandoned an entry heretofore made under said laws: So help me God.

—— ——.

Sworn to and subscribed before me, ——, Register of the Land Office at ——, this —— day of ——, 187——. —— ——,

Register.

108. *Affidavit for Indian Homestead under Act of March 3d, 1875.*

I, ——, of ——, having filed my application, No. ——, for an entry under the provisions of the Act of Congress of March 3d, 1875, do solemnly swear that I am an Indian, formerly of the —— tribe; that I was born in the United States; that I have abandoned my relations with that tribe and adopted the habits and pursuits of civilized life; [*here state whether the applicant is twenty-one years of age, or the head of a family*] that I desire said land for the purpose of actual settlement and cultivation, and not directly or indirectly for the use or benefit of any person or persons whomsoever; and that I have not heretofore had the benefit of said act.

Sworn to and subscribed before me this —— day of ——, 187——. —— ——,

Register [or Receiver].

**109.** *Corroborative affidavit—Indian Homestead.*

We, ——, and ——, do solemnly swear that we are well acquainted with ——, and know that he is an Indian, formerly of the —— tribe; that he was born in the United States; that he has abandoned his relations with that tribe, and adopted the habits and pursuits of civilized life [*here state that he is twenty-one years of age, or if not, the head of a family.*] —— ——.

—— ——.

Sworn to and subscribed before me this —— day of ——, 187——. —— ——.

**110.** *Affidavit of applicant for a patent.*

NOTE.—The Revised Statutes of the United States, Sec. 4892, require the applicant for a patent to make oath "that he does verily believe himself to be the original and first inventor and discoverer of the art, machine, manufacture, composition, or improvement for which he solicits a patent; that he does not know and does not believe that the same was ever before known or used; and shall state of what country he is a citizen. Such oath may be made before any person within the United States authorized by law to administer oaths, or, when the applicant resides in a foreign country, before any minister, chargé d'affaires, consul, or commercial agent, holding commission under the Government of the United States, or before any notary public of the foreign country in which the applicant may be."

In regard to this, the Attorney-General, in September, 1861, at the request of Caleb B. Smith, Secretary of the Interior, gave his opinion that the oath must be taken personally by the applicant, and not by his agent. He says: "The oath required is eminently one of substance. It compels the applicant to assert two facts which necessarily can only be within his personal knowledge, viz: that he believes that he is the original inventor of the thing proposed to be patented, and that he does not know or believe that the same was ever before known or used. It is impossible that these facts can be originally known to any one but the inventor, and if they are sworn to by his agent or attorney, the evidence is nothing but hearsay." 10 Attorney-Gen. Op. 140.

STATE OF ——, }
County of ——, } ss.

A B, the above named petitioner, being duly sworn, [or affirmed] deposes and says: That he verily believes himself to be the original and first inventor of the improvement in seed-drills, [or whatever the invention may be] described and claimed in the foregoing specification; and he does not know and does not believe that the same was ever known or used; and that he is a citizen of ——, and a resident of ——. A B.

Sworn to and subscribed before me this —— day of ——, 18——.

—— ——,
Notary Public.

# Forms Required in Taking Depositions.

Officers taking depositions under a commission should be very careful to execute the duty carefully, or otherwise the commission will be a nullity when returned into Court. As evidence in the form of depositions is an innovation on common-law procedure, and is admitted on statutory enactments, Courts are very strict in seeing that the requirements of the statute have been duly observed. In late times, this kind of evidence is very frequently produced, and it is therefore very desirable, in a work of this character, to give abstracts of the statutory directions in the various States, with approved forms, for the guidance of notaries, and others who are empowered to take depositions. I shall therefore examine the provisions of each State, and give a brief and accurate synopsis of the statute under each, and the required forms. In each instance, the latest compilation or revision of the statutes will be referred to. Before executing a commission, it would be well to refer to the sixth chapter, where the law is given relating to the execution and return of the commission.

—o—

## ALABAMA.

The testimony of witnesses resident without the State, or who are about to remove from the State, or where the witness is a female, or, from infirmity, or age, or sickness, is unable to attend Court, or resides more than a hundred miles from the place of trial, or where the witness is Governor of a State, or a State official, or of a profession or calling such as to prevent attendance at the place of trial, may be taken by interrogatories. It is the duty of the commissioner to reduce the answers of the witness to writing, or cause it to be done by the witness, or some impartial person, as near as may be in the language of the witness, having first sworn him to speak the truth, the whole truth, and nothing but the truth; and when completed, the deposition must be read over to the witness, and by him subscribed. After the signature, the commissioner appends a certificate of the manner, time, and place

ALABAMA—CONTINUED.

of taking the deposition, as in the form following, and signs it. The package may be sent by mail or private conveyance, sealed and directed to the clerk of the Court. Rev. Code, Secs. 2716–2730.

111. *Form of caption and certificate.*

JOHN DOE
*v.*
RICHARD ROE.

I, ——, one of the commissioners named in the annexed commission, caused to come before me at ——, in the county of ——, State of ——, C D, a witness examined by the plaintiff in the annexed stated cause, and having sworn him, or affirmed him, on the Holy Evangelists, the truth to speak, the whole truth and nothing but the truth, he deposes and says as follows:

1. To the first interrogatory, he saith:

[*Here write the answer in the language of the witness.*]

If there are cross or rebutting interrogatories, proceed in the same manner. And let the witness sign, after which the commissioner or commissioners then add the following:

I, ——, said commissioner, hereby certify that I caused to come before me at [*stating full address*] the above named witness, C D; that he was duly sworn and examined; that his evidence was taken down as near as may be in his own language, and was read over to him, and by him subscribed in my presence, and that the identity of the said witness is known to me [or has been made known to me by proof made by E F] as the same person named in the interrogatories and the commission annexed.

As witness my hand and seal, this —— day of ——, A. D. 18——.

—— ——.

The title and names of parties are indorsed, and the packet sealed, and the commissioner should write his name across the seals.

——o——

## ARIZONA.

In the Territory, a deposition in civil cases may be taken of a party to the action, of a witness residing more than fifty miles from the place of trial, of a witness about to leave the county who may be absent at time of trial, and of a witness too infirm to attend the trial. The deposition, when completed, shall be carefully read to the witness, and corrected by him in any particular, if desired; it shall then be subscribed by the witness, certified by the officer, inclosed in an envelope or wrapper, sealed, and directed to the clerk of the Court in which the action is pending. Comp. Laws, p. 449.

The deposition of a witness out of the Territory may be taken

ARIZONA—CONTINUED.

by a person upon whom the parties agree, or when they do not, it is directed to any judge or justice of the peace, selected by the officer granting the commission, or to a commissioner for the Territory. The commission shall authorize the commissioner to administer an oath to the witness, and to take his deposition in answer to the interrogatories, and to certify the deposition to the Court in a sealed envelope, directed to the clerk or other person agreed upon. Comp. Laws, p. 450.

The form given for California may be used.

—o—

## ARKANSAS.

Depositions may be taken out of the State, before a commissioner appointed by the Governor thereof, a judge of a Court, a justice of the peace, mayor of a city, notary public, or any other person empowered by a commission directed to him. A certificate of the official character of the officer taking a deposition out of the State is required, attested under the seal of State. Gantt's Dig. p. 499.

Neither party can be present, unless both are represented, or the opposite party has had seasonable notice: p. 501.

The officer before whom a deposition is taken shall decide, summarily, all objections to questions; but in matters of doubt shall permit the questions to be answered, noting the objection in the deposition. The statement must be written by the officer, or by the witness in his presence. The officer must certify the time and place of taking the deposition, that the witness was duly sworn before he gave his testimony, and that his testimony was written, and read to, and subscribed by him, in the presence of the officer. He must also state by whom it was written, and which of the parties, in person, or by agent or attorney, was present at the examination of the witness. The depositions, when completed, must be sealed up by the officer and directed to the clerk of the Court before whom the action is pending, with an indorsement thereon, showing them to be depositions, and the style of the case. They must then be either delivered or mailed to the clerk by the officer taking them, except that when taken out of the State they may be delivered to the party taking the same, his agent or attorney, to be by him delivered; such person so delivering them being required to take an oath that they have not been opened by him, or other person, to his knowledge. Gantt's Dig. Secs. 2578–2581.

112. *Form of caption and certificate.*

The deposition of ——, taken on the —— day of ——, 18——, at the office of ——, in the ——, [*giving full address*] to be read in evidence in an action between John Doe, plaintiff, and Richard Roe, defendant, pending in the Court of ——, —— County, Arkansas.

## ARKANSAS—Continued.

*Certificate.*

State of Arkansas, } ss.
County of ——, }

I, ——, a notary public in and for said county, do certify that the foregoing deposition of —— was taken before me, and was read to and subscribed by him in my presence, at the time and place mentioned in the caption, the said —— having been first sworn by me that the evidence he should give in the action should be the truth, the whole truth, and nothing but the truth; and his statements were reduced to writing by me in his presence, [or by him in my presence] the plaintiff alone being present at the examination [or the defendant, or both, or neither, in person or by attorney, as the case may be].

Witness my hand and seal of office, at ——, on this —— day of ——, 18——. —— ——.

## CALIFORNIA.

Commissions for taking the depositions of witnesses out of the State are issued from the Court in which the action is pending. They can be taken by a commissioner of the State, or by any person agreed upon by the parties. When the parties cannot agree, the commission is issued to any judge, or justice of the peace, or commissioner selected by the officer issuing the commission. Code of Proced. Sec. 2024.

The examination of the witness need not be in answer to written interrogatories in respect to the question in dispute, if the parties so agree. The officer is required to certify the deposition to the Court in a sealed envelope, directed to the clerk, or other persons designated or agreed upon, and forwarded to him by mail, or other usual channel of conveyance. Code of Proced. Sec. 2026.

**113.** *Form of caption and certificate.*

Deposition of ——, a witness sworn and examined under and by virtue of a commission issued out of the —— Court of ——, in and for the county of ——, in the State of California, in a certain cause therein pending between John Doe, plaintiff, and Richard Roe, defendant.

——, of [*state residence of witness*] being duly sworn to speak the truth, the whole truth, and nothing but the truth, deposes and says as follows:

To the first interrogatory he says, etc.

## CALIFORNIA—CONTINUED.

*Certificate.*

STATE OF CALIFORNIA, }
County of ——, } ss.

I, Holland Smith, the commissioner named in the said commission, do hereby certify that the witness —— appeared before me, and, after being duly sworn, his evidence was taken down, and read over and corrected by him, after which he subscribed the same in my presence, on the —— day of ——, 18——, at my office, 309 Montgomery Street, in the city and county of San Francisco, and that I have personal knowledge of the said witness [or proof was made of his identity].

In witness whereof, I have hereunto set my hand and official seal, the day and year aforesaid. HOLLAND SMITH,

[*Seal.*] Notary Public.

## COLORADO.

Depositions out of the State may be taken on commission issued to any number of persons not exceeding three, or to any judge or justice of the peace of the county where such witness may reside. Rev. Stat, p. 311.

Before examination, the witness shall be sworn, or affirmed, to testify the truth in relation to the matter in controversy so far as he or she may be interrogated, and then the answers of such witness in response to the interrogatories shall be written down, and signed by such witness; after which it shall be the duty of the person or persons taking the deposition to annex at the foot thereof a certificate subscribed by him or them, stating that it was sworn to and signed by the deponent, and the time and place where the same was taken; and the depositions and exhibits, together with the commission, shall be inclosed, sealed up, and directed to the clerk of the Court wherein the action is pending, with the names of the parties litigant indorsed thereon.

When a judge or justice of the peace acts as a commissioner, his official character must be certified to under the great seal of the proper Court of the county or city where such deposition is taken. Rev. Stat. p. 313.

The form for Arkansas may be used, certifying that the witness was sworn to testify the truth in relation to the matter in controversy, as the statute above requires.

## CONNECTICUT.

When any witness in a civil action lives out of the State, or more than twenty miles from the place of trial, is going to sea, or out of the State, is sixty years old, or by age or infirmity is unable to

## CONNECTICUT—CONTINUED.

travel to Court, or is confined to jail, his deposition may be taken by a judge of any Court, justice of the peace, notary public, or commissioner of the Superior Court. Depositions may be taken in any other State or country by a notary public, commissioner appointed by the Governor of this State, or any magistrate having power to administer oaths. All witnesses giving depositions shall be cautioned to speak the whole truth, and carefully examined, and shall subscribe their depositions, and make oath before the officer, who shall attest the same, and certify that the adverse party or his agent was present, (if so) or that he was notified, and shall also certify the reason of taking such deposition. He shall then seal it up, direct it to the Court where it is to be used, and deliver it, if desired, to the party at whose request it was taken. The official character of the magistrate taking the deposition, if a notary or Connecticut commissioner, is proved by his seal. The official character of a justice of the peace must be proved by a certificate under seal of the Court, the clerk of which is the keeper of record of the appointment of justices, unless waived by the adverse party.

Any deposition written, drawn up, or dictated by the party, his attorney, or any person interested, or that shall be returned to Court unsealed, or with the seal broken, shall be rejected by the Court. Rev. Stat. of 1875, pp. 435, 436.

**114.** *Certificate of deposition.*

STATE OF CONNECTICUT, } ss.
County of ——, }

The —— day of ——, A. D. 18——. Then personally appeared the above named A B, signer of the foregoing deposition, and after having been duly cautioned to speak the whole truth, and carefully examined, did subscribe the same and make oath before me that the same contains the truth, the whole truth, and nothing but the truth.

The foregoing deposition is taken pursuant to the annexed notice at the request of the ——, to be read on the trial of an action pending before the —— Court, within and for the county of —— and State of Connecticut, in which action John Doe is plaintiff, and Richard Roe defendant.

The cause of taking the deposition is [*stating the cause*]. The adverse party was notified to be present at the taking of this deposition, and was present thereat [or as the case may be].

## DAKOTA.

Depositions may be taken, in this Territory, before a judge or clerk of either the Supreme, the District, or County Court, before a justice of the peace, notary public, mayor, or chief magistrate of any city or town corporate, or before a master, commissioner, or

## DAKOTA—CONTINUED.

any person employed by a special commission, but depositions taken in this Territory, to be used therein, must be taken by an officer or person whose authority is derived within the Territory. Depositions may be taken out of the Territory by a judge, justice. or chancellor of any Court of Record, a justice of the peace, notary public, mayor, chief magistrate of any city or town corporate, a commissioner appointed by the governor of this Territory to take depositions, or any person authorized by a special commission from this Territory. The depositions must be written in the presence of the officer taking the same, either by the officer, the witness, or some disinterested person, and subscribed by the witness. The deposition so taken shall be sealed up and indorsed with the title of the cause and the name of the officer taking the same, and by him addressed and transmitted to the clerk of the Court where the action or proceeding is pending, or to the justice, mayor, or other judicial officer, arbitrator, or referees, if the action or proceeding is pending before them. The officer, if he has a seal, may certify himself to his official character; but if he have none, it must be certified to by the secretary or other officer of State, or parol proof must be offered as to his official character. The officer shall annex to the deposition a certificate showing that the witness was first sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition was reduced to writing by some person [naming him]; that the deposition was written and subscribed in the presence of the officer certifying thereto; that the deposition was taken at the time and place specified in the notice. Laws of 1872–3, pp. 16–17.

## DELAWARE.

If it appear by affidavit that there is a material witness residing out of the county, whose attendance it is not practicable to procure, the justice may make a rule that his deposition shall be taken by a commissioner named by him. * * * * * * * The justice shall forward a copy of the rule and the questions to the commissioner, with a copy of this section. The deposition must be taken in writing, signed by the witness, certified by the commissioner, and sent, sealed up, to the justice. The witness must first be sworn or affirmed by the commissioner, to answer the questions truly; neither party shall be present at the taking of the deposition, and no question shall be put but those sent by the justice. Rev. Code of 1874, p. 620.

115. *Form of caption and certificate.*

Deposition of witness sworn [or affirmed] and examined the —— day of ——, in the year 18——, at ——, county of ——, and State of ——, under and by virtue of a commission issued out of

## DELAWARE—CONTINUED.

the —— Court, in and for the county of ——, State of Delaware, in a certain cause therein depending between John Doe, plaintiff, and Richard Roe, defendant.

A B, a witness, being duly sworn and examined on the part of the plaintiff, doth depose and say as follows:

To the first interrogatory he saith: [*And so on.*]

When the deposition is finished, it should be subscribed by the witness, and the commissioner should write his name on each separate sheet and certify the deposition, as follows:

*Certificate.*

Examination of A B, a witness on the part of the plaintiff [or defendant] in the above stated cause, who is personally known to me, [or proof having been made before me of the personal identity of said witness] and who was, between the hours of 8 o'clock A. M. and 4 o'clock P. M., on the —— day of ——, 18——, at my office ——, [*giving full address*] called before me, and who, after being sworn to speak the truth, the whole truth, and nothing but the truth, did depose and testify to the above deposition, which was taken down and reduced to writing by me, and signed by said witness in my presence. All of which I certify under my hand and official seal, this —— day of ——, 18——. —— ——.

If there be any instrument or document produced and proved by the witness, it should be attached, and all carefully sealed and directed to the clerk of the Court, with the title of the cause indorsed thereon.

——o——

## FLORIDA.

Where a witness resides out of the State, or out of any county in which his testimony may be required in any cause, or who is bound on a voyage to sea, or is about to go out of the State and remain until after the trial, or is very aged or infirm, a commission may be had to take his deposition, addressed to not less than two commissioners. The commission shall be annexed to the interrogatories, and be tested from the Court issuing the same. In issuing the commissions, blanks may be left for the names of the commissioners, but the names of the witnesses to be examined must be distinctly specified in the interrogatories and commission.

The return may be made by mail, or by a party to the cause, or any other person who shall make oath "that he received the said packet from one of the commissioners; that it had been in his possession ever since, and has not been opened or altered. If returned by mail, the postmaster at the office to which the packet is conveyed must indorse "received by due course of mail."

The commissioners, having sealed up the commission and deposition, shall write their names across the seals of the envelope, and

## FLORIDA—CONTINUED.

give the packet such direction as will enable the Court to know that it was intended for the Court, and applicable to some particular cause therein. Bush's Dig. p. 314.

**116.** *Form of caption and certificate.*

Deposition of witnesses produced, sworn, and examined on the —— day of ——, A. D. 18——, at the office of ——, Commissioner, [*giving full address*] by virtue of the the annexed commission, issued out of the clerk's office of the —— Court of the —— Circuit of Florida, for the county of ——, to us directed, for the examination of said witnesses in a cause therein depending between John Doe, plaintiff, and Richard Roe, defendant, on the part of the plaintiff. ——, of the ——, [*giving residence of witness*] being duly sworn, deposeth and answereth as follows:

1. To the first interrogatory the witness saith: [*And so on.*]

The witness must then sign the deposition, and the commissioners attest the same, by the following jurat:

Sworn to and subscribed before us the —— day of ——, 18——.

—— ——,

—— ——,

Commissioners.

If there are cross-interrogatories, they should proceed with them, and insert the answers immediately following the answers of the direct interrogatories in the form following:

The said witness answers and deposes to the cross-interrogatories as follows:

1. To the first cross-interrogatory he answers and says:

And the answers to the cross-interrogatories should be signed by the witness, and attested by the commissioners, in the same manner as directed for the direct interrogatories.

—o—

## GEORGIA.

Commissions shall issue generally in blank, allowing the party to select his commissioners; but in any case, the opposite party shall have the privilege of naming two competent commissioners, whose names shall be inserted in the commission, and one of whom shall act in the execution thereof, unless a good and sufficient reason be shown for his failure. No person is competent to act as commissioner who would be incompetent as a juror on account of relationship, or as a witness on account of interest; nor will the attorney of the party, or his clerk, or an agent paid to discharge this duty, be a competent commissioner. Reasonable compensation may be paid to the commissioners, but not more than two dollars per day shall be taxed as costs against a party. No party, or his

## GEORGIA—CONTINUED.

counsel, or his agent, or other person on his behalf, should be present at the execution of the commission, and everything attending the execution should show a perfect impartiality and freedom from bias. Code of 1873, Secs. 3882–4.

Witnesses may write out their own answers in the presence of the commissioners, and by their consent, but in no other way shall they prepare the same; and if the witnesses answer from written memoranda, such memoranda shall be sent with the commission, and the fact certified by the commissioners.

After execution, the interrogatories, answers, and commissions should be inclosed in an envelope and sealed, with the names of the commissioners written across the seal, and directed to the officer of the Court whence the commission issued. The package can be sent by mail, or intrusted to the party, or some private hand. In the former case, the postmaster receiving it from the commissioner must certify to its reception by due course of mail. In the latter case, the person receiving and delivering it in Court must make affidavit of the fact, and of its freedom from alteration. The Code, Sec. 3891, provides the following form :

117. *Form of caption.*

STATE OF GEORGIA, }
County of ——, } ss.

By virtue of an agreement between the parties or counsel, in the case of —— *v.* ——, pending in the —— Court of —— County, [or district, as the case may be] the undersigned, acting as commissioners, have caused A B, a witness in said cause, to come before us, who, being duly sworn true answers to make to the annexed interrogatories, deposes and answers as follows:

1. To the first interrogatory he answers: [*And so on.*]

To the first cross-interrogatory he answers, etc.

Answered, subscribed, and sworn to before us, this —— day of ——, 18——.

E F, Commissioner. [*Seal.*]
G H, Commissioner. [*Seal.*]

In case the commission is under appointment of Court, it may begin: "By virtue of a commission from the honorable the —— Court of —— County, to us directed, we have caused A B," etc.

——o——

## IDAHO.

In this Territory, the deposition of a witness may be taken when the witness is a party to or benefited by the action, when he resides out of the county, when he is about to leave the county to be absent at the time of trial, when he is too infirm to attend, and when the testimony is required upon a motion, or in any other case where the oral examination of the witness is not required.

## IDAHO—CONTINUED.

The deposition, when completed, shall be carefully read to the witness, and corrected by him in any particular if desired. It shall be subscribed by the witness, certified by the officer, and inclosed in an envelope or wrapper, sealed, and directed to the clerk of the Court, or to such person as the parties in writing may agree upon.

Out of the Territory, within the United States, a deposition of a witness may be taken by a commission directed to a person agreed upon by the parties, or, if they do not agree to any judge or justice of the peace, a commissioner selected by the officer issuing the commission. If issued to any country out of the United States, it may be directed to a minister, embassador, consul, vice-consul, or consul-agent of the United States in such country, or to any person agreed upon by the parties.

The commission shall authorize the commissioner to administer an oath to the witness, and to take his deposition in answer to the interrogatories; or when the examination is to be made without interrogatories, in respect to the question in dispute, [same as in California] and to certify the deposition to the Court in a sealed envelope, directed to the clerk, or other person designated or agreed upon, and forwarded to him by mail or other usual channel of conveyance. Rev. Laws, (1876) pp. 227, 228.

For form of certificate, use that given for California.

—o—

## ILLINOIS.

Resident witnesses may be examined and their deposition taken when they reside out of the county, when about to depart from the State, when they are in custody on legal process, or are too infirm to attend Court. Their deposition may be taken before a justice of the peace, clerk of a Court, or notary public. The testimony of a witness residing in the State, more than a hundred miles from the place of trial, or residing out of the State, may be taken by deposition on a commission directed to any competent or disinterested person, as commissioner, or to any judge, master in chancery, notary public, or justice of the peace of the county or city in which such witness may reside, or in case to take the testimony of a person engaged in the United States army or navy, "to any commissioned officer in the military or naval service of this State or the United States."

Previous to examination, the witness shall be sworn to testify the truth in relation to the matter in controversy, so far as he or she may be interrogated. The witness, after giving the deposition, shall sign it, the officer shall annex to the foot thereof a certificate subscribed by himself, stating that it was sworn to and signed by the deponent, at the time and place when and where the same was taken. All the papers shall be inclosed in an envelope, sealed up, and directed to the clerk of the Court in which the action shall be

ILLINOIS—CONTINUED.

pending, with the names of the parties litigant indorsed thereon.

When any deposition shall be taken by any judge, master in chancery, notary public, or justice of the peace out of this State, or other officer, the return shall be accompanied by a certificate of his official character, under the great seal of the State, or under the seal of the proper Court of Record of the county or city wherein such deposition shall be taken.

The party, his attorney, or any person who shall in anywise be interested in the event of the suit, shall not be permitted to dictate, write, or draw up any deposition which may at any time be taken, or be present during the taking of any deposition by written interrogatories; and every deposition so dictated, written, or drawn up, or during the taking of which any such party, his attorney, or any person so interested is present when the same is taken upon written interrogatories as aforesaid, shall be rejected by the Court as informal and insufficient. Rev. Stat. of 1874, pp. 492–494.

118. *Form of caption and certificate.*

The deposition of ——, of the county of —— and State of ——, a witness of lawful age, produced, sworn, and examined on his corporal oath, on the —— day of ——, A. D. 18——, at the office [or house] of ——, in the town [or city] of ——, in the county of —— and State of —— aforesaid, by me, a commissioner [or "by us" if more than one commissioner, inserting the names of all the commissioners] duly appointed by a *dedimus potestatem*, or commission issued out of the clerk's office of the Superior Court of Cook County, [or other Court, as the case may be] in the State of Illinois, bearing test in the name of ——, Esq., clerk of said Court, with the seal of said Court affixed thereto, and to me [or us] directed as such commissioner for the examination of the said ——, a witness in a certain suit and matter in controversy now pending and undetermined in the said Superior Court of Cook County, wherein —— is plaintiff and —— defendant, in behalf of the said, as well upon the cross-interrogatories of the ——, as on the interrogatories of the ——, which were attached to and inclosed with the said commission, and upon none others. The said ——, being first duly sworn by me [or by ——, one of the said commissioners] as a witness in the said cause, previous to the commencement of his examination, to testify the truth, as well on the part of the plaintiff as the defendant, in relation to the matters in controversy between the said plaintiff and defendant, so far as he should be interrogated, testified and deposed as follows:

"Interrogatory first." [*Here insert it.*]

"Answer to first interrogatory." [*Here insert it.*]

After the deposition is taken, the interrogatories and answers should be read over to the witness, and if he assents to the truth of the answers, he will then sign his name, and swear to the truth of the

## ILLINOIS—CONTINUED.

deposition. This oath is in addition to the preliminary oath which is administered previous to the commencement of his examination.

*Certificate.*

I, ——, of the county of —— and State of ——, a commissioner duly appointed to take the deposition of said ——, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said —— as a witness in the suit between the said ——, plaintiff, and the said ——, defendant, he was duly sworn by me as such commissioner, to testify the truth in relation to the matters in controversy between the said ——, plaintiff, and the said ——, defendant, so far as he should be interrogated concerning the same; that the said deposition was taken at my office [or at the house of ——] in the city of ——, in the county of —— and State of ——, on the —— day of ——, A. D. 18——, and that after said deposition was taken by me [or us] as aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witness, and that thereupon the same was signed and sworn to by the said deponent ——, before me, [or us] the oath being administered by ——, one of said commissioners, [where there are more than one] as such commissioner at the place and on the day and year last aforesaid.

——, Commissioner.

## INDIANA.

Depositions of witnesses, taken within or without the State, may be taken before any judge, justice of the peace, notary public, mayor or recorder of a city, clerk of a Court of Record, or commissioner appointed by the Court; but shall not be taken before any person being of kin to either party, or interested in the action. The officer taking the deposition shall have power to summon and compel the attendance of witnesses; and this power can be exercised by officers appointed to take depositions in the State under commission from another State. 2 G. & H. Stat. p. 176.

The deponent shall be first sworn by the officer to testify the truth, the whole truth, and nothing but the truth relating to the cause. The deposition shall be written down by the officer, or by the deponent, or by some disinterested person, in the presence and under the direction of the officer, and after the same has been carefully read by the deponent, it shall be subscribed by him. The officer shall annex a certificate, stating the following facts: 1. That the deponent was sworn according to law. 2. By whom the deposition was written, and if written by the deponent, or some disinterested person, that it was written in the presence and under the direction of the officer. 3. Whether or not the adverse party attended. 4. The time and place of taking the deposition, and the

## INDIANA—CONTINUED.

hours between which the same was taken, and the officer shall sign and attest the certificate, and seal the same, if he have a seal of office. He shall seal up in an envelope, and direct the deposition to the clerk of the Court, indorsing on the envelope the names of the parties and witnesses whose depositions are inclosed. 2 Gavin & Hord, pp. 176, 177.

It has been held in this State that the omission to state whether or not the adverse party attended is fatal to the deposition. Madison etc. R. R. Co. *v.* Whitesel, 11 Ind. 55.

**119.** *Form of caption and certificate.*

Deposition of ——, witness, produced and sworn before me, a —— of ——, at ——, in —— county, State of ——, on the —— day of ——, 18——, pursuant to the inclosed notice [and commission, if there be one]. This [or these] depositions —— taken on the part of the ——, in a certain action now pending in the —— Court of —— County, in the State of Indiana, wherein John Doe is plaintiff and Richard Roe is defendant. The said ——, [*naming first witness*] being duly sworn to testify the truth relating to said cause, deposes as follows:

Examined by ——.

Question 1.

Answer. [*And so on, the cross-examination in the same manner.*]

*Certificate.*

STATE OF INDIANA, } ss.
County of ——, }

I, ——, a ——, within and for said county, hereby certify that the above [*here give name of witness or witnesses*] was by me first duly sworn according to law, to testify the truth, the whole truth, and nothing but the truth relating to said cause; that his deposition was reduced to writing by me [or by said deponent, or by A B, a disinterested person, in my presence and under my direction]; that said [adverse party] attended in person, [or by C D, his or their attorney, or was not present, as the case may be] and said deposition was taken at ——, in ——, county of ——, State of ——, on the —— day of ——, 18——, between the hours of —— A. M. and —— P. M., of said day.

In testimony whereof, I have hereunto set my hand and —— seal, this —— day of ——, 18——.

If the officer have no seal, and his name is not mentioned in the commission, he must procure the authentication of his certificate by the certificate and seal of the clerk or prothonotary of any Court of Record of the county in which the officer exercises the duties of his office.

## IOWA.

If a witness resides out of the county wherein the cause is pending, whether within or without the State, his deposition may be taken before one or more commissioners on written interrogatories. The commissioners selected may be the clerk, or any judge of a Court of Record, or a commissioner of the State, a notary public, or any consul or consular agent of the United States. The commission must have inserted in it the name of office of such officer, or his individual name and official style, and the name of the Court of which the commissioner is clerk or judge, and the name of the State and county; or if without the United States and Canada, the name of the State and town or city in which such commissioner, notary, or consul, or consular agent resides. None of these officers are authorized to take the deposition except within the limits of their official jurisdiction. The officer must cause the interrogatories propounded, whether written or oral, to be written out, and the answers thereto to be inserted immediately underneath the respective questions. The answers must be in the language, as near as practicable, of the witness, if either party requires it. The person taking the deposition shall certify that it was subscribed and sworn to by the deponent at the time and place therein mentioned. The whole, including the commission and interrogatories, when any such were issued, must be sealed up and returned to the clerk of the proper county by mail, unless a different mode be agreed upon between the parties.

Where a deposition is taken upon interrogatories, neither party, nor his agent, nor his attorney, shall be present at the examination of a witness, unless both parties are present or represented by an agent or attorney, and the certificate shall state such fact if the party or his agent is present. When returned by mail, the officer shall state, on the outside of the envelope, the title of the cause in which the deposition is to be used.

Where depositions are directed to be taken before a judge or justice of the peace, merely by his name of office, the return must contain an authentication by the clerk of the proper Court, under his seal of office, verifying the fact, that the person is really such officer. The deposition must show that the witness is a non-resident of the county, or such other fact as renders the taking of the deposition legal. Code of 1873, pp. 574–6.

### 120. *Form of caption and certificate.*

Depositions of witnesses produced, sworn, and examined at ——, before me, [*giving name and style of officer*] in a certain case now pending in the —— Court of —— County, State of Iowa, between John Doe, plaintiff, and Richard Roe, defendant. On the part of the plaintiff, [or the defendant] A B, of lawful age, being produced, sworn, and examined, deposeth and saith: [*Here insert each*

## IOWA—CONTINUED.

*interrogatory as it occurs, and the answers thereto immediately following.*]

A separate caption is written down for each witness, as follows:

Deposition of C D.—The said C D, being first duly sworn and examined on the part of the plaintiff, [or defendant] doth depose and say, in answer to the several interrogatories, as follows, to wit:

Interrogatory first: [*Insert the interrogatory; then the answer.*]

At the foot of each deposition the officer will certify as follows:

I, ——, do hereby certify that A B, the deponent, whose place of residence is [*here insert it*] was by me sworn to testify the whole truth of his [or her] knowledge touching the matter in controversy in the case aforesaid; that deponent was examined, and his examination reduced to writing by [*give name of person*] who is neither of the parties, nor attorney of either, nor in anywise interested in the suit; and after being carefully by me read over to the said deponent the same was sworn to and subscribed by the said deponent in my presence, on the —— day of ——, A. D. 18——, between the hours of —— A. M. and —— P. M. of the said day, at ——. Given and certified under my hand and official seal, the —— day of ——, A. D. 18——. —— ——, Commissioner.

When all the witnesses are sworn and examined, the officer will attach to the deposition all papers and exhibits, the commission and notice, with the following certificate indorsed thereon, or attached thereto:

STATE OF IOWA, } ss.
County of ——, }

I, ——, a ——, within and for the county of ——, do certify that in pursuance of the within [or annexed] commission and notice, came before me at my office, [*stating full address*] —— and ——, who were there by me sworn and examined, and such examination reduced to writing by [*insert name of person*] who is neither of the parties, their attorney, nor in anywise interested in the event of the suit; and after being by me read over to each of the deponents, the same was sworn to and subscribed to by said witnesses respectively in my presence, and their depositions are now herewith returned. [*Then state if either or both parties were present at the examination personally, or by agent or attorney.*] Given under my hand and official seal, hereto affixed, at ——, this —— day of ——, A. D. 18——. —— ——, Commissioner.

## KANSAS.

The deposition of a witness may be taken in the State before a judge or clerk of a Court of Record, before a county clerk, justice of the peace, notary public, mayor, or chief magistrate of any city, or town corporate, or before a master commissioner, or person em-

KANSAS—CONTINUED.

powered by a special commission. Out of the State, a deposition may be taken by a judge, justice, or chancellor of any Court of Record, a justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, a commissioner appointed by the governor to take depositions, or any person authorized by a special commission from the State. The deposition shall be written in the presence of the officer, either by the officer, the witness, or some disinterested person, and subscribed by the witness. When finished, it shall be sealed up and indorsed with the title of the cause and the name of the officer taking the same, and transmitted to the clerk of the Court.

The officer shall annex thereto a certificate, showing that the witness was first sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition was reduced by some proper person, naming him; that it was written and subscribed in the presence of the officer; and that it was taken at the time and place specified in the notice. Depositions taken by officers here mentioned, having a seal of office, whether resident within or without the State, shall be admitted in evidence, upon the certificate and signature of such officer, or his official seal, and no other or further authentication is required. If the officer have no seal, the deposition, if taken out of the State, shall be certified and signed by such officer, and shall be further authenticated, either by parol proof, adduced in Court, or by the official certificate and seal of any secretary or other officer of the Territory keeping the great seal thereof, or of the clerk or prothonotary of any Court having a seal, attesting that such judicial or other officer was, at the time of taking the same, duly qualified, and acting as such officer. But, if the deposition be taken within the State by an officer having no seal, or within or without the State under a special commission, it shall be sufficiently authenticated by the official signature of the officer or commissioner. Gen. Stat. p. 696.

If there are adjournments, they should be noted by the officer from day to day, and legal reasons given therefor.

121. *Form of caption and certificate.*

Depositions of sundry witnesses taken before me ——, within and for the —— county of ——, in the State of ——, on the —— day of ——, in the year 18——, between the hours of —— A. M. and —— P. M., at —— in said county, pursuant to the annexed notice, [or agreement, as the case may be] to be read in evidence on behalf of the plaintiff, [or defendant] in the said action. A B, of lawful age, being by me first duly examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, deposeth and saith:

## KANSAS—Continued.

*Certificate.*

I, ——, a —— in the county of ——, do hereby certify that A B and C D, who have testified, were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respectively subscribed, as above set forth, were reduced to writing by myself, [or by another person who is not interested, naming him, and stating it done in the officer's presence] in presence of the witnesses respectively, and were respectively subscribed by the said witness [or witnesses] in my presence, and were taken at the time and place in the annexed notice [or agreement] specified; that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit; [*if there had been adjournments, add:*] and commenced at the time in the notice specified, and continued by adjournments from day to day as above stated. —— ——, Commissioner.

—o—

## KENTUCKY.

Depositions may be taken out of the State before a commissioner, appointed by the governor thereof, a judge of a Court, a justice of the peace, mayor of a city, notary public, or any person empowered by a commission directed to him by consent of the parties, or by order of the Court. Civil Prac. Code, Sec. 628.

In the State, depositions are taken before examiners appointed for that purpose. But where an examiner cannot be obtained in the county, or where the witness is unable, from age, infirmity, or imprisonment, to attend at the examiner's office, and the examiner refuses to go to him, or where all the examiners of the county are interested in the county, the depositions may be taken before a judge of a Court, a justice of the peace, a notary public, or a clerk of a Court. Where parties consent in writing, justices of the peace may take depositions. Secs. 624, 625.

Where a deposition is taken by interrogatories, neither party, nor his agent nor attorney, shall be present at the examination of the witnesses, unless both parties are present or represented, or unless the party has been notified to attend, the other being present. The certificate shall state the time and place of taking the deposition, that the witness was duly sworn before he gave his testimony, and that his testimony was written, read to, and subscribed by him in the presence of the officer; and also state by whom it was written, and which of the parties, in person, or by agent or attorney, was present at the examination of the witness.

The deposition may be mailed, or delivered to the party, or some one for him, who will make oath that he did not open the deposition, or any person for him. Sec. 646.

## KENTUCKY—CONTINUED.

**122.** *Form of caption and certificate.*

The deposition of ——, taken on the —— day of ——, 18——, at ——, county of ——, State of ——, to be read as evidence in an action between John Doe, plaintiff, and Richard Roe, defendant, now pending in the —— Court for —— County, State of Kentucky.

*Certificate.*

I, a —— for the county of ——, do certify that the foregoing deposition of —— was taken before me and was read to and subscribed by him in my presence, at the time and place and in the action mentioned in the caption, the said —— having been first sworn by me that the evidence he should give in the action should be the truth, the whole truth, and nothing but the truth, and his statements reduced to writing by me in his presence, [or by him in my presence] the plaintiff alone being present at the examination [or the defendant, or neither party, in person or by attorney, being present at the examination, according to the facts]. Given under my hand and seal this —— day of ——, 18——.

—— ——, Commissioner.

—o—

## LOUISIANA.

The commission may be executed by any one of the commissioners. If they are all absent, or otherwise incapable of executing it, it may be executed by any judge or justice or the peace. If executed by any other than one of the commissioners, expressly named, it will be necessary to obtain the certificate of the governor of the State that the judge or justice of the peace officiating was such on the day or days when the commission was executed, and that his signature to the commission was genuine. The commissioner ought, previous to writing the answer of the witness, to swear him to declare the truth on the questions put to him in the cause. The commissioner should draw his *procès verbal*, or certificate of the taking of the depositions, and annex the same to the commission and interrogatories.

**123.** *Form of caption and certificate.*

STATE OF LOUISIANA, } ss.
County of ——, }

Be it remembered, that I, ——, do hereby, that acting by virtue of and in obedience to the inclosed and annexed commission issued out of the Honorable District Court for the —— Judicial District of Louisiana, in a case entitled John Doe *v.* Richard Roe, I have cited A B, of said county, a witness on behalf of the plaintiff [or

## LOUISIANA—CONTINUED.

defendant] in the above entitled cause, to appear before me in the said [city or county] on this —— day of ——, 18——, and being then and there duly sworn, upon the Bible, to declare the truth on the questions and cross-questions put to him in the cause, answered as follows to the questions and cross-interrogatories annexed to said commission, to wit:

To interrogatory first, witness answered: [*And so on.*] Each deposition should be subscribed by the person making it, and there should be annexed at the foot of it the following jurat: Sworn to and subscribed on the —— day of ——, 18——, at the place first aforesaid. —— ——, Commissioner.

*Certificate.*

STATE OF LOUISIANA, }
County of ——, } ss.

I, ——, do hereby certify that the foregoing depositions were reduced to writing as aforesaid by me, and that the same were signed as above by the witnesses in my presence.

In witness whereof, I have hereunto set my hand and affixed my official seal, the —— day of ——, 18——.

—— ——, Commissioner.

The commission, interrogatories, cross-interrogatories, answers, and documents therein referred to, and the certificate of the commissioner, should all be wafered or sealed together, the whole inclosed in an envelope and sealed, the commissioner's name written over the seal, the expense of taking the same marked inside, the title of the suit marked outside the envelope, and the whole addressed to "The Clerk of —— Judicial District, Louisiana."

——o——

## MAINE.

In any cause depending in the State, depositions may be taken out of the State as follows:

By commission issuing out of the Court wherein the action is pending, and addressed to any judge of a Court of Record, notary public, or person named therein. Attorneys, or parties interested in the suit, should not be present at the taking of the depositions. The witness must be sworn prior to his examination, and subsequent interrogatories should not be put until the former ones have been answered.

**124.** *Form of caption and certificate.*

The deposition of ——, to be used in evidence in a certain cause now pending in the —— Court of the State of Maine, within and for the county of ——, in the State of Maine, wherein John Doe

## MAINE—CONTINUED.

is plaintiff, and Richard Roe is defendant. ——, of the [*giving address of witness*] being first duly sworn, deposes and says as follows:

*Certificate.*

STATE OF MAINE, }
County of ——, } ss.

On this —— day of —— A. D. 18——, the within named deponent personally appeared before me at [*giving official residence*] in said county, was first sworn by me, according to law, to testify the truth, the whole truth, and nothing but the truth, relating to the cause or matter for which his within deposition was taken, and then, being examined on interrogatories, according to law, gave, on oath, the within deposition, which was written by ——, a disinterested person, in the presence and under the direction of myself; and after the said deposition had been carefully read by me to said deponent, it was then subscribed by him in my presence. Said deposition was taken at the request of the plaintiff [or defendant]; the adverse party was notified to attend, and did [or did not] attend its taking. The cause in which it is to be used is an action of trespass in which John Doe is plaintiff and Richard Roe defendant, which is now pending in the —— Court, within and for the county of ——, in said State, and is to be tried in said Court at its term to be holden at ——, within and for said county of ——, on the —— day of ——, A. D. 18——.

The cause of taking said deposition is that the deponent does not reside in the State of Maine, but is a resident of the——.

Witness my hand and seal at said ——, the day and year first named. —— ——, Commissioner.

—o—

## MARYLAND.

When witnesses reside out of the State a commission will issue, provided it be shown, by affidavit or otherwise, that such commission is proper and necessary. The commissioners are named by the Court, and must be sworn before some judge or justice "truly, faithfully, and without partiality to execute the duties of commissioner according to the best of their judgment." The official character of the person administering the oath should be certified by a clerk of a Court of Record. Two commissioners are named in the commission; one or both may act. It is competent for the parties, their agents and attorneys, to be present at the execution of any commission. One of the commissioners will administer to the witness whom they are about to examine on oath or affirmation, in the established form of the place, "to make true answers to all such questions as shall be asked upon the interrogatories annexed to the commission, without favor or affection to either party, and therein to speak the truth, the whole truth, and nothing but the truth."

## MARYLAND—Continued.

The witness must subscribe his examination with his name, and the commissioners must subscribe their names opposite to his signature, for the purpose of identifying it, and if in the course of the examination the witness shall produce or refer to any paper, exhibit, or document, the same must be marked by some letter or figure, and further identified by the commissioners in the following manner: "This is the paper, exhibit, or document referred to by ——, in his examination, as the paper marked 'A,'" etc., to which they will sign their names. The commissioners must bind up the depositions and exhibits together with the commission, tape passing through and connecting the whole, and then make the following indorsement on the commission: "The execution of this commission appears in a certain schedule hereunto annexed," to which they also subscribe their names and affix their seals. Thus prepared and executed, they will inclose the same in an envelope, sealed with their seals, their names written across or by the side of the seal, and the whole addressed to the clerk of the Court.

**125.** *Form of caption and certificate.*

At the execution of the annexed commission, issued out of the —— Court for —— county, and to us directed, and empowering us to examine evidences in the cause depending in said Court, between John Doe, plaintiff, and Richard Roe, defendant, we, —— and ——, commissioners therein named, having met on the —— day of ——, A. D. 18——, at —— o'clock, at [*place of meeting*] and taken before ——, a commissioner for Maryland in ——, [or other officer] the oath annexed to the said commission, did proceed then and there to take the following depositions, to wit:

——, a witness of lawful age, produced on the part of the plaintiff, [or defendant] being duly sworn and examined on the interrogatories herewith returned, deposes and says:

To the first interrogatory:

Answer:

*Certificate.*

There being no other witnesses to be examined, the commissioners closed the said commission, and herewith return the same, under their hands and seals, this —— day of ——, A. D. 18——.

—— ——, Commissioner.
—— ——, Commissioner.

——o——

## MASSACHUSETTS.

In the State a deposition may be taken when the witness lives more than thirty miles from the place of trial, or is about to go out of the State, not to be present at the trial, or when the witness

## MASSACHUSETTS—CONTINUED.

is sick, infirm, or aged. The deposition may be taken on notice before a justice of the peace, who puts such interrogatories as he shall think fit. The witness may write his deposition, or some disinterested person, by direction and in the presence of the justice. He shall be sworn or affirmed to testify the truth, the whole truth, and nothing but the truth relating to the cause. Gen. Stat. of 1860, p. 674.

The deposition of a witness without the State may be taken under a commission issued to one or more competent persons, or it may be taken before a commissioner appointed by the governor for that purpose, in any part of the United States or in any foreign country. Every deposition so taken must be upon written interrogatories.

Neither party shall be permitted to attend at the taking of the deposition, either by attorney or agent. The deposition must be taken in a place separate and apart from all other persons, and no person permitted to be present during such examination except the deponent and the commissioner, and such disinterested person as the commissioner may think fit to appoint as clerk. The commissioner is requested, in making his return, to write upon the envelope the names of the parties to the suit and the title of the Court.

**126.** *Form of caption and return.*

STATE OF MASSACHUSETTS, }
County of ——. }

Pursuant to the foregoing commission, I caused the said —— to come before me on the —— day of ——, A. D. 18——, and having sworn the said —— to testify the truth, the whole truth, and nothing but the truth relating to the cause for which the deposition is taken, I examined the said ——, and reduced his testimony to writing. Neither of said parties was present by himself, or by agent or attorney; nor did either of them communicate in any manner with the deponent whilst giving his deposition; and I took said deposition separate and apart from all other persons, no person being present except myself; and in taking the depositions I put the interrogatories and cross-interrogatories to the deponent as directed in the foregoing commission, and in all respects fully and exactly complied with the directions in said commission in taking the same. And after the said deposition was taken I carefully read the same to the said ——, and he subscribed it in my presence.

—— ——, Commissioner.

## MICHIGAN.

The persons to whom a commission shall be directed, or any of them, shall execute it as follows:

## MICHIGAN—CONTINUED.

1. They, or one of them, shall publicly administer an oath to the witness, that the answers given by him to the interrogatories proposed shall be the truth, the whole truth, and nothing but the truth.

2. They shall cause the examination of each witness to be reduced to writing, and to be subscribed by him, and certified by such of the commissioners as are present at the taking of the same.

3. Exhibits produced and proved before them shall be annexed and subscribed by the witness, and also certified by the officers.

4. The commissioners shall subscribe their names to each sheet of the depositions. They shall annex all the depositions and exhibits to the commission upon which their return shall be indorsed; and they shall close them up under their seals, and address the same, when so closed, to the clerk of the Court from which the commission issued.

5. If there shall be a direction to return by mail, they shall immediately deposit the packet so directed in the nearest post-office.

6. If there be a direction to return by an agent of the party, the packet so directed shall be delivered to such agent. This agent shall make affidavit that he received the same from the hands of the commissioners, and that it has not been opened or altered since he received it. Comp. Laws, p. 1695. The oath shall be administered in the following form: "You do solemnly swear, in the presence of Almighty God, that the answers given by you to the interrogatories proposed to you shall be the truth, the whole truth, and nothing but the truth: So help you God."

### 127. *Form of caption and certificate.*

Deposition of ——, of the ——, aged —— years, a witness produced, sworn, and examined on the —— day of ——, A. D. 18——, at my office, [*giving full address of the commissioner*] by virtue of a commission issued out of the —— Court, for the county of ——, in the State of Michigan, on the —— day of ——, A. D. 18——, and directed to me, commissioner for the examination of ——, a witness in a cause depending and at issue in said Court, between John Doe, plaintiff, and Richard Roe, defendant, on the part of said plaintiff [or defendant]. Having read said commission and the instructions thereto annexed, and having administered an oath to said witness, that the answers given by him to the interrogatories proposed to him should be the truth, the whole truth, and nothing but the truth, I proceeded to the examination as follows, namely:

——, of the [*giving full address of witness*] aged —— years and upwards, a witness produced, sworn, and examined on the part of the plaintiff [or defendant] in said cause, deposeth as follows, namely:

1. To the first interrogatory, he saith:

## MICHIGAN—CONTINUED.

*Certificate.*

STATE OF MICHIGAN, }
County of ——. }

I, —— the undersigned commissioner, hereby certify that on this —— day of ——, A. D. 18——, then ——, of ——, personally appeared before me at my office ——, and, after having taken the oath prescribed in the instructions annexed to the commission mentioned in the caption to the above deposition, which oath was administered by me, and taken by said witness with uplifted hands, [or by whatever mode] declared that the foregoing deposition, by him subscribed, contains the truth, the whole truth, and nothing but the truth; said witness residing without the State of Michigan. The deposition was reduced to writing by me, the said commissioner [or by a disinterested person in my presence, or by the witness himself].

In witness whereof, I have hereto set my hand and affixed my official seal, the day and year aforesaid.

—— ——, Commissioner.

——o——

## MINNESOTA.

The deposition of any witness without the State may be taken under a commission issued to any competent person in any State or country, and the deposition may be used in the same manner, and subject to the same conditions and objections, as if it had been taken in the State. The deponent shall be sworn and examined, and his deposition shall be written by the officer or deponent, or some disinterested person, carefully read to and subscribed by the witness, and the commissioner shall annex thereto a certificate, under his hand, of the time and manner of taking it, and he shall insert in the certificate the names of the persons at whose request it was taken.

123. *Form of caption and return.*

I, ——, commissioner named in the within and above written commission, do certify that the said commission was executed and the testimony of —— was taken before me at ——, on the —— day of ——, A. D. 18——, at —— o'clock in the forenoon, and was taken at the request of ——, and reduced to writing by myself [or as the case may be]. That the said testimony was taken by and pursuant to the authority and requirements of said commission, [or stipulation, as the case may be] upon the interrogatories hereto annexed and herewith returned. That said witness before examination was sworn to testify the truth, the whole truth, and nothing but the truth relative to the cause specified in said commission, and that the testimony of said witness was carefully read to [or by] said witness, by me, and then by him subscribed in my presence.

—— ——, Commissioner.

## MISSISSIPPI.

When witnesses are non-residents, a commission to take their deposition may be directed to one or to several commissioners in the alternative by name, or to any judge of a Court of Record, justice of the peace, mayor or chief magistrate of a city or town, commissioner appointed by the governor of the State, or other person authorized to administer oaths by the law of the place where the deposition is taken, and the certificate of any such officer shall be prima facie evidence of his official character, and his authority to administer oaths. The witnesses shall be sworn by the commissioner to testify the whole truth and nothing but the truth, and the commissioners, or one of them, shall carefully and impartially examine the witness, on the interrogatories and cross-interrogatories annexed to the commission, and shall cause the testimony to be written down by himself, or by the witness or some disinterested person in his presence, and subscribed by the witness, and the testimony so taken, with the commission and interrogatories, and every exhibit and voucher relating thereto, and also a certificate by the commissioner of all his proceedings therein, shall be sealed up and directed to the clerk of the Court where the action is pending. The commissioner shall indorse the style of the cause and the word "deposition" on the envelope. Rev. Code of 1871, Sec. 794.

**129.** *Form of caption and certificate.*

Be it remembered, that on this —— day of ——, A. D. 18——, by virtue and in pursuance of a commission to me directed, from the —— Court for the —— Judicial District of the State of Mississippi, to take the deposition of ——, a witness for the complainant in a certain cause therein pending, wherein John Doe is complainant and Richard Roe is defendant, on the interrogatories and cross-interrogatories annexed to and accompanying said commission, I caused the said ——, a person of sound mind, and upwards of twenty-one years of age, to come before me at my office in ——. Said ——, being by me first duly cautioned to speak the truth, the whole truth, and nothing but the truth, in answer to the interrogatories and cross-interrogatories, did depose and say:

In answer to interrogatory first:

In answer to interrogatory second:

[*Signature of witness.*]

Sworn to and subscribed before me at ——, the —— day of ——, A. D. 18——.

—— ——, Commissioner.

*Certificate.*

STATE OF MISSISSIPPI, }
County of ——, } ss.

I, ——, specially appointed a commissioner in the cause styled in the caption of the foregoing deposition, to take the testimony of

MISSISSIPPI—CONTINUED.

——, a witness for the complainant in said cause, do hereby certify that I caused to come before me the said ——, at ——, and he, being by me first duly cautioned, sworn, and examined to speak the truth, the whole truth, and nothing but the truth, in answer to the said interrogatories and cross-interrogatories did give the foregoing deposition; that the answers of the said —— were by me reduced to writing in the presence of said witness, and carefully read to and thoroughly understood by said witness, as his deposition in said cause, and that he signed the same as his deposition in my presence, and that the questions propounded to said witness, and to which he answered, are the direct and cross-interrogatories accompanying said commission; that said deposition has in no manner been changed or altered since the same was subscribed by the said witness, but that the same was in my possession up to the time of sealing and delivering the same to the post-office, [or party, as the case may be] directed to the clerk of said Court.

In witness whereof, I have hereunto set my hand and affixed my seal, this —— day of —— A. D. 18——.

—— ——, Commissioner.

——o——

## MISSOURI

In the State, the commission may be directed to any judge, justice of the peace, notary public, or clerk of a Court of Record, being in the county where such testimony is to be taken. Out of the State, the commission may be directed to and executed by any clerk or judge of a Court of Record, or notary public in any of the United States. 2 Wag. Stat. 992.

The officer shall reduce to writing all the answers of the witnesses; and all the questions and answers shall be written in the English language, and, being distinctly read to such witness, shall be sworn to and subscribed by him. The officer shall have power to adjourn from day to day, whenever necessary. He shall attach a certificate, stating the time and place, when and where the depositions were taken; that the witnesses were duly sworn as to the truth of their depositions, and that they subscribed the same; and shall inclose them, together with the commission and evidence of notice; and the whole, carefully sealed up, shall be sent by the officer, by mail, to the clerk of the Court. The official character of the officer should be certified to, by some Court of Record, where he acts under seal.

130. *Form of caption and certificate.*

Depositions of witnesses, produced, sworn, and examined on the —— day of ——, in the year of our Lord 18——, between the

MISSOURI—CONTINUED.

hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at ——, [*here give full official address*] before me, a commissioner appointed in a certain cause, now depending in the —— Court, of the county of ——, in the State of Missouri, between John Doe, plaintiff, and Richard Roe, defendant, on the part of the plaintiff [or defendant]; A B, of lawful age, being produced, sworn, and examined on the part of the plaintiff, deposeth and saith:

The officer will annex, at the foot of the deposition of each witness, the following certificate:

Subscribed and sworn to before me on the day, at the place, and within the hours aforesaid. —— ——, Commissioner.

*Certificate.*

I, ——, a —— within and for the city and county of ——, in the State of ——, do certify that, in pursuance of the [within or annexed, as the case may be] commission or notice, came before me, at ——, in the county and State last aforesaid, [*here insert names of witnesses*] who were by me severally sworn [or affirmed] to testify the whole truth of their knowledge touching the matter in controversy aforesaid; that they were examined, and their examination reduced to writing and subscribed by them respectively, in my presence, on the day, between the hours, and at the place in that behalf first aforesaid, and their said depositions are now herewith returned. [*If the officer know the residence of the witness, he will include the following in his certificate:*] And I further certify that said A B is a resident of the county of —— in the State of ——.

Given at ——, in the county of —— and State of ——, this —— day of ——, 18——. —— ——, Commissioner.

The depositions must be begun on the day mentioned in the notice; and if they cannot be finished on that day, the taking of them may be adjourned to the succeeding day, at the same place, and between the same hours. The person taking them should in such case make the following entry, closing the business for that day:

Not being able to complete the taking of said depositions, by reason that [*here insert the cause*] I adjourned the further taking of the same till to-morrow, then to be continued, at the same place and between the same hours mentioned in the annexed notice.

—— ——, Commissioner.

On the succeeding day let the person taking the deposition commence as follows:

Pursuant to the adjournment, as above stated, on the —— day of ——, 18——, between the hours of —— o'clock in the forenoon, and —— o'clock in the afternoon, at the county of ——, I continued the taking of said depositions as follows, viz: ——, in continuation of his deposition commenced yesterday, on his oath further says, etc.

## MONTANA.

In the Territory, a deposition may be taken before any judge or clerk, or any justice of the peace, or notary public. After the examination is completed, the deposition shall be carefully read to the witness, and corrected by him in any particular; it shall then be subscribed by the witness, certified by the judge or officer taking the deposition, inclosed in an envelope or wrapper, sealed and directed to the clerk of the Court, or to such person as the parties in writing may agree upon. Laws of Montana, p. 131.

The deposition of a witness out of the Territory shall be taken upon commission issued from the Court where the suit is pending. It shall be issued to a person agreed upon between the parties, or, if they do not agree, to any judge or justice of the peace selected by the officer granting the commission, or to a commissioner appointed by the governor of the Territory to take affidavits and depositions in other States, or to a notary public. The commission shall authorize the commissioner to administer an oath to the witness, and to take his deposition in answer to the interrogatories, or, when the examination is to be without interrogatories, in respect to the question in dispute, and to certify the deposition to the Court in a sealed envelope, directed as in the case of depositions taken within the State. Laws of Montana, p. 133.

The form for California may be used.

## NEBRASKA.

Depositions in other States and Territories may be taken before any of the following officers: A judge, justice, or chancellor of any Court of Record, a justice of the peace, notary public, mayor, or chief magistrate of any city or town corporate, a commissioner appointed by the governor, or any person appointed by a special commission. Depositions out of the State must be taken on written interrogatories, unless the parties otherwise agree. Gen. Stat. of 1873, p. 588.

The deposition shall be written in the presence of the officer taking the same, either by the officer, the witness, or some disinterested person. The deposition, when completed, shall be sealed up and indorsed with the title of the cause and the name of the officer taking the same, and by him addressed and transmitted to the clerk of the Court.

The officer taking the deposition sufficiently authenticates his official character by the seal of the Court, or his official seal; but if the officer have no official seal, the deposition, when not taken within the State, shall be certified and signed by such officer, and shall be further authenticated, either by parol proof adduced in Court, or by the official certificate and seal of any secretary or other officer of State keeping the great seal thereof, or of the clerk of

## NEBRASKA—CONTINUED.

any Court having a seal. The officer taking a deposition shall annex a certificate showing the following facts: 1. That the witness was sworn to testify the truth, the whole truth, and nothing but the truth. 2. That the deposition was reduced to writing by some proper person, naming him. 3. That the deposition was written and subscribed in the presence of the officer certifying thereto. 4. That the deposition was taken at the time and place specified in the notice. Gen. Stat. 589.

**131.** *Form of caption and certificate.*

Depositions of witness taken in an action pending in the —— Court of —— County, in the State of Nebraska, wherein A B is plaintiff and C D is defendant, and for said plaintiff [or defendant] in pursuance of the notice hereto annexed. [*Here state which of the parties, their agents or attorneys, were present.*]

——, of the county of —— and State of ——, of lawful age, being first duly sworn by me as hereinafter certified, deposes as follows:

If more than one witness is called to testify, let each succeeding one commence as follows:

Also, ——, of the county of —— and State of ——, of lawful age, being first duly sworn by me as hereinafter certified, deposes as follows:

*Certificate.*

I, ——, do hereby certify that the above-named —— and —— were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing depositions, by them respectively subscribed, were reduced to writing by me, [or by the witness, or by M N, a disinterested person] and were written, and, by said witnesses respectively, subscribed in my presence, and were taken at the time and place specified in the notice hereunto attached.

Witness my hand and seal, [if one there be] this —— day of ——, A. D. 18——. —— ——, Commissioner.

## NEVADA.

In the State, a deposition may be taken before any judge or clerk of a Court, or any justice of the peace or notary public. Either party may attend such examination, and put such questions as may be proper. The deposition, when completed, shall be carefully read to and corrected by the witness in any particular, if desired; it shall then be subscribed by the witness, certified by the officer, inclosed in an envelope or wrapper, sealed and directed to the clerk of the Court, or to such person as the parties in writing may agree upon.

NEVADA—CONTINUED.

Out of the State, the deposition of a witness may be taken on a commission directed to a person agreed upon by the parties, or, if they do not agree, to any judge or justice of the peace, selected by the officer granting the commission, or to a commissioner appointed by the Governor of the State, to take affidavits and depositions in other States or Territories. Comp. Laws, Sec. 1473. The commission shall authorize the commissioner to administer an oath to the witness, and to take his deposition in answer to the interrogatories, or, when the examination is to be without interrogatories, in respect to the question in dispute, and to certify the deposition to the Court, in a sealed envelope, directed to the clerk, or other person designed or agreed upon, and forwarded to him by mail or other usual channel of conveyance. Sec. 1475.

182. *Form of caption and certificate.*

Depositions of witnesses produced, sworn, [or affirmed] and examined, the —— day of ——, in the year one thousand eight hundred and ——, at ——, under and by virtue of a commission issued out of —— District Court of the —— Judicial District of the State of Nevada, in and for the county of ——, in a certain cause therein depending and at issue between —— and ——, as follows: ——, of ——, by occupation a ——, aged —— years and upwards, being duly and publicly sworn, [or affirmed] pursuant to the directions hereto annexed, and examined on the part of the plaintiff, [or defendant] doth depose and say as follows, namely:

To the first interrogatory he saith:

To the second interrogatory he saith: [*And so on.*]

When the witness has finished his deposition, let him subscribe it, and the acting commissioner will certify as follows:

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this —— day of ——, A. D. 18——, before me.

—— ——, Commissioner.

When any papers or exhibits are produced and proved, they must be annexed to the depositions in which they are referred to, and be subscribed by the witness, and be indorsed by the acting commissioner in this manner:

At the execution of a commission for the examination of witnesses between ——, plaintiff, and ——, defendant, this paper writing was produced and sworn to by ——, and by him deposed unto, at the time of his examination before me.

—— ——, Commissioner.

The acting commissioners will sign their names to each half-sheet of the depositions and exhibits. The commissioner will make return on the back of the commission by indorsement, thus:

NEVADA—CONTINUED.

The execution of this appears in certain schedules hereunto annexed. —— ——, Commissioner.

The depositions and exhibits [if any] shall be annexed to the commission, and all folded and bound with tape. The commissioner will set his seal at the several meetings or crossings of the tape, indorse their names on the outside, and direct to the clerk of the Court. When the commission is returned by mail, it should be deposited in the nearest post-office, the commissioner making the following indorsement thereon:

Deposited in the post-office at ——, this —— day of ——, 18——, by me. —— ——, Commissioner.

——o——

## NEW HAMPSHIRE.

Depositions in the State may be taken by any justice or notary public; if taken out of the State, before any commissioner appointed by the governor to take acknowledgments, etc., or before any judge, justice of the peace, or notary public. Where a deposition is taken out of the State, the official character of the person before whom it is taken must be duly certified by some clerk of a Court of Record, under its seal, or by the secretary of State, under the seal of the State, which certificate must be annexed to the caption. The witness must sign the deposition and make oath that it contains the truth, the whole truth, and nothing but the truth, concerning the cause for which it is taken. The officer shall certify that the oath was administered, the time and place of taking the deposition, the case and Court in which it is to be used, that the adverse party was or was not present, was or was not notified, and that he did or did not object. A copy of the notice left with the adverse party, his agent or attorney, with the return of the officer or affidavit of the person leaving such notice thereon, stating the time of leaving the same, shall be annexed to the caption of the deposition, when the adverse party does not attend. Depositions shall be sealed up by the officer, and directed to the Court or justice before whom they are to be used, with a brief description of the case, and shall be so delivered into Court. Gen. Stat. p. 430. It is required that the commissioner note on the deposition the fees, and tax the same.

133. *Form of caption and certificate.*

STATE OF NEW HAMPSHIRE, } ss.
County of ——, }

Personally appearing the within named ——, at ——, in said county, on this —— day of ——, A. D. 18——, and made solemn

## NEW HAMPSHIRE—CONTINUED.

oath that the within deposition, by him subscribed, contains the truth, the whole truth, and nothing but the truth relative to the cause for which it was taken.

Taken at the request of ——, of the —— aforesaid, to be used at the —— Court, to be held at ——, in and for the county of ——, in the State of New Hampshire, on ——, in a plea wherein ——, of ——, aforesaid, is plaintiff, and ——, of ——, aforesaid, is defendant. That said——, being duly notified, was [or was not] present, and did not object. The deponent living more than ten miles from the place of trial is the cause of this caption. The taking of said deposition was commenced at 11 o'clock of the forenoon in said day, and continued till the whole was completed before me. —— ——, Commissioner.

Commissioner's fees.....$——
Deponent's fees..... ——
Notification..... ——
Service of notification..... ——
Subpœna..... ——
Services..... ——

$——

Taxed on the —— day of ——, 18——, by
—— ——, Commissioner.

The depositions should be sealed up in an envelope, and addressed to the —— Court for the county of ——, in the State of New Hampshire, and, in addition, should be written on the envelope as follows:

Inclosed are depositions to be used in the action in which —— is plaintiff and —— is defendant. Taken and sealed by me,
—— ——, Commissioner.

——o——

## NEW JERSEY.

Depositions of witnesses residing out of the State may be taken by any chancellor, judge of a Supreme, Circuit, or District Court, commissioner appointed by the governor to take acknowledgments and proofs of deeds, residing in the State where such witness is, or a commissioner appointed by the Court in which such suit is pending.

The testimony is to be taken on oath or affirmation, and the interrogatories and answers reduced to writing by the officer, and subscribed by the deponent in his presence. The officer himself must first take and subscribe an oath or affirmation to fairly and impartially take the deposition, before some person lawfully authorized to administer oaths where the officer resides. The testimony

## NEW JERSEY—Continued.

must be certified, sealed up, indorsed, directed, and forwarded to the judge of the Court wherein the cause is pending.

**134.** *Form of caption.*

State of New Jersey, } ss.
County of ——, }

Be it remembered, that on this —— day of ——, in the year 18——, before me, ——, appeared —— and ——, produced before me as witnesses in a suit now depending in the —— Court of the State of New Jersey, wherein John Doe is plaintiff and Richard Roe is defendant. And I, having first taken an oath fairly and impartially to take the depositions of witnesses before ——, of the —— Court, who is lawfully authorized to administer oaths in this State and county, proceeded to take the testimony of said witnesses hereinafter named, upon interrogatories put by ——, who appeared on behalf of the plaintiff, and ——, who appeared on behalf of the defendant, and reduced such interrogatories and the answers thereto in writing, and caused each witness to subscribe his deposition in my presence, as follows: —— ——, Commissioner.

A B, a witness produced on the part of the plaintiff, [or defendant] being by me first duly sworn, according to law, doth depose and say [or doth solemnly declare] as follows:

——o——

## NEW YORK.

The deposition of witnesses out of the State may be taken on a commission directed to one or more competent persons, authorizing them, or any one of them, to examine witnesses on oath, upon the interrogatories annexed. It is customary to issue the commission to an attorney. With the commission and interrogatories are inclosed printed instructions for the guidance of the commissioner. The following are the statutory directions for executing the commission: 1. The commissioners, or any one of them, shall publicly administer an oath to the witnesses, that the answers given by them shall be the truth, the whole truth, and nothing but the truth. 2. They shall cause the examination of each witness to be reduced to writing, and to be subscribed by him and certified by the commissioners present. 3. Exhibits produced and proved shall be annexed to the depositions to which they relate, shall be subscribed by the witness, and certified by the commissioners. 4. The commissioners shall subscribe their names to each sheet of the depositions; they shall annex all the exhibits to the commission, upon which their return shall be indorsed, and they shall close them up under their seals, and shall address the same, when so closed, to the clerk of the Court from which the commission issued. 5. If there be a

## NEW YORK—CONTINUED.

direction on the commission to return the same by mail, they shall immediately deposit the packet, so directed, in the nearest post-office. 6. If there be a direction to return the same by an agent of the party who sued out the commission, the packet, so directed, shall be delivered to such agent. 3 Rev. Stat. (6th Ed.) p. 655.

The oath is administered in the following form: "You do swear that the answers which shall be given by you to the interrogatories proposed to you, shall be the truth, the whole truth, and nothing but the truth: So help you God." The oath shall be administered (except in the cases hereinafter mentioned) by the witness laying his hand upon and kissing the gospels. But, should the witness desire it, he may be sworn in the following form: "You do swear, in the presence of the ever-living God," and while so swearing he may or may not hold up his hand, at his discretion. Or, when the witness has conscientious scruples, he can affirm in the following manner: "You do solemnly, sincerely, and truly declare and affirm," omitting the words "so help you God."

**185.** *Form of caption and certificate.*

Depositions of witnesses, produced, sworn, [or affirmed] and examined the —— day of ——, in the year one thousand eight hundred and ——, under and by virtue of a commission issued out of the ——, in a certain action therein pending and at issue between John Doe, plaintiff, and Richard Roe, defendant, as follows:

A B, of ——, aged —— and upwards, examined on the part of the plaintiff, [or defendant] doth depose and say as follows, namely: First. To the first interrogatory, he saith, etc.

After the deposition is finished, let the witness subscribe his name, and the commissioner will certify as follows:

*Certificate.*

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this —— day of ——, 18——, before me.

—— ——, Commissioner.

—o—

## NORTH CAROLINA.

The depositions shall be taken on commission issuing from the Court, and under the seal thereof, when the commissioner resides out of the county, by one or more commissioners who shall be of kin to neither party, and shall be appointed by the clerk. Battle's Digest, p. 227.

The evidence shall be reduced to writing by the commissioners, they returning the interrogatories accompanying the commission and the evidence in writing, together with a certificate under their

## NORTH CAROLINA—CONTINUED.

hands and seals, stating when, where, and how the commission has been executed, inclosed, and sealed in an envelope, with the name of the case indorsed thereon and directed to the clerk of the Court from which the commission issued.

The form for New York may be used.

## OHIO.

Depositions may be taken in the State before a judge or clerk of the Supreme Court, the Court of Common Pleas, or Probate Court, before a justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, or before a master commissioner, or any person empowered by a special commission. Out of the State, depositions may be taken before a judge, justice, or chancellor of any Court of Record, a justice of the peace, notary public, mayor, or chief magistrate of any city or town corporate, or commissioner appointed by the governor of the State to take depositions, or any person authorized by a special commission from the State. 2 S. & C. 1041.

The deposition shall be written in the presence of the officer, either by him, the witness, or some disinterested person, and subscribed by the witness. The deposition so taken shall be sealed up and indorsed with the title of the cause and the name of the officer taking the same, and by him addressed to the clerk of the Court where the action or proceeding is pending. 2 S & C. 1042.

The officer shall annex a certificate stating the following facts: 1. That the witness was first sworn to testify the truth, the whole truth, and nothing but the truth. 2. That the deposition was reduced to writing by some proper person, naming him. 3. That the deposition was written and subscribed in the presence of the officer certifying thereto. 4. That the deposition was taken at the time and place specified in the notice.

Officers taking depositions, whether in the State or out of it, can authenticate their official character by their seal and certificate; but when they have no official seal, the deposition, if not taken within the State, shall be certified and signed by the officer, and shall be further authenticated, either by parol proof adduced in Court, or by the official certificate and seal of any secretary or other officer of State keeping the great seal thereof, or of the clerk or prothonotary of any Court having a seal. When the deposition is taken under a special commission, it shall be sufficiently authenticated by the official signature of the officer or commissioner taking the same.

136. *Form of caption and certificate.*

The depositions of witnesses to be used in evidence in a certain action now pending in the —— Court in the County of ——, in

OHIO—CONTINUED.

the State of Ohio, wherein John Doe is plaintiff and Richard Roe is defendant, A B, of ——, in the county of —— and State of ——, of lawful age, being first duly sworn, deposes and says as follows:

*Certificate.*

STATE OF OHIO, } ss.
County of ——, }

I, ——, do hereby certify that A B and C D were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the depositions by them respectively subscribed were reduced to writing by M N, a disinterested person, and were written and subscribed in my presence, and taken at the time and place specified in the notice hereto annexed.

—— ——, Commissioner.

——o——

## OREGON.

The deposition of a witness out of the State may be taken upon commission issued from the Court, or without commission before a commissioner appointed by the Governor of the State to take depositions in other States or countries. The commission may be issued to a person agreed upon by the parties, or, if they do not agree, to a judge, justice of the peace, notary public, or clerk of a Court, selected by the officer issuing it. The examination may be without written interrogatories, if the parties agree to that mode. The deposition, sealed, must be directed to the clerk of the Court.

In the State, it is provided that the officer taking a deposition shall append a certificate under the seal of his office, if any, to the effect that the deposition was taken before him, or at a place mentioned, between certain hours of a day or days mentioned, and reduced to writing by a person therein named; that, before proceeding to the examination, the witness was duly sworn to tell the truth, the whole truth, and nothing but the truth, and that the deposition was read to or by the witness, and then by him subscribed. The package may be sent by mail, or other usual channel of conveyance. Gen. Stat. p. 351.

**137.** *Form of caption and certificate.*

I, ——, of ——, in the county of ——, in the State of ——, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, in answer to the interrogatories and cross-interrogatories annexed to the foregoing commission, depose and say as follows:

To the first interrogatory, I answer:

The deposition should be without interlineation, and each page,

## OREGON—CONTINUED.

and each line of the page, should be numbered. The name of the witness, and words "direct examination," or "cross-examination," as the case may be, should be placed upon the margin of each page of the deposition.

*Certificate.*

STATE OF OREGON, } ss.
County of ——, }

This certifies that I, —— of the county of ——, in the State of ——, by virtue of the foregoing commission to me directed, caused the above named ——, the deponent therein mentioned, to come before me in my office in said county of ——, on the —— day of ——, A. D. 18——, between the hours of —— o'clock A. M. and —— P. M. of said day, and he, being then and there duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross-interrogatories thereto annexed, gave the foregoing answers, and that said answers were reduced to writing in my presence, and then carefully read by me to the deponent, and then by him subscribed in my presence.

In testimony whereof, I have hereunto set my hand and seal this —— day of ——, A. D. 18——

—— ——, Commissioner.

——o——

## PENNSYLVANIA.

The depositions of witnesses are allowed to be taken out of the State under a commission, and according to such rules as the Courts may prescribe. The commission must be executed by the commissioner named therein. A reasonable notice should be given of the time and place of meeting to the agent who may attend the execution of the commission, that he may collect the witnesses. The witness should be examined on oath or affirmation in the established form of the place, if the same be binding on his conscience, to make true answers to all such questions as shall be asked, upon the interrogatories annexed to the commission, without favor or affection to either party, and therein to speak the truth, the whole truth, and nothing but the truth. When the witness finishes his deposition it should be subscribed with his name or mark, and the commissioners should subscribe their names opposite, for the purpose of identifying it, and at the foot of every page of testimony. Exhibits produced shall be verified by the signature of the witness, and certified by the commissioners. When an adjournment is necessary, the same shall be noted, and the reasons therefor. When all is completed, the following indorsement is made on the commission: "The execution of this commission appears in a certain schedule hereunto annexed"; the commissioners sign their names thereto, and also write their names across or beside the seals.

## PENNSYLVANIA—CONTINUED.

**188.** *Form of caption and certificate.*

Depositions of witnesses produced, sworn, [or affirmed] and examined on the —— day of ——, in the year of our Lord 18——, at the office of ——, by virtue of a commission issuing from the Court of ——, for —— County, State of Pennsylvania, to him directed for the examination of witnesses in a certain cause depending in said Court, wherein John Doe is plaintiff and Richard Roe is defendant.

A B, of the ——, aged —— years or thereabouts, being produced, sworn, [or affirmed] and examined on behalf of the plaintiff, [or defendant] deposeth as follows: To the first interrogatory on the part of the plaintiff [or defendant] he answers as follows:

*Certificate.*

STATE OF PENNSYLVANIA, } ss.
County of ——, }

I, ——, do hereby certify that the said witness, ——, prior to the taking of such depositions on the said —— day of —— A. D. 18——, was by me duly sworn to testify the truth in relation to the matter in controversy, in the suit before mentioned in the caption to this deposition, and in the inclosed commission, so far as he might be interrogated in relation thereto, and the said deposition was on the —— day of ——, A. D. 18——, in the ——, sworn to, taken and reduced to writing, and signed by said witness in my presence.

Given under my hand and seal at ——, this —— day of ——, A. D. 18——.

—— ——, Commissioner.

—o—

## RHODE ISLAND.

Any justice of the Supreme Court, justice of the peace, or notary public may take the deposition of any witness to be used in the trial of any civil action in which he is not interested, nor of counsel, nor the attorney of either party. Every person before deposing shall be sworn to testify the truth, the whole truth, and nothing but the truth. He shall subscribe the testimony by him given after the same shall be reduced to writing, which shall be done only by the officer, or by the deponent in his presence. Rev. Stat. of 1872, p. 471.

Depositions taken without the State shall be taken with the formalities required by the law of the State or country in which the same shall have been taken, or before some commissioner appointed by the governor, or by some judge, chancellor, or other civil magistrate of such State or country.

## RHODE ISLAND—CONTINUED.

139. *Form of certificate.*

STATE OF RHODE ISLAND, } ss.
County of ——, }

Be it remembered, that in——, on the —— day of ——, A. D. 18——, personally appeared before me, at ——, A B, who, being by me first carefully examined, cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, gave the foregoing deposition, which was by me reduced to writing in his presence, [or by him reduced to writing in my presence] and by him signed in my presence.

Taken at the request of ——, [by virtue of annexed commission, as the case may be] to be used in the trial of an action pending in the Court of ——, to be holden in ——, within and for the county of ——, in the State of Rhode Island, on the —— day of ——, A. D. 18——.

The adverse party was duly notified, as appears by the return of the notification thereto annexed, and was [or was not] present.

—— ——, Commissioner.

Fees, forty cents each hour necessarily employed; thirty cents each page.

## SOUTH CAROLINA.

Notaries public and clerks of Courts may take depositions within the State. Rev. Stat. of 1873, pp. 113, 180.

Out of the State the deposition of a witness is taken on a commission directed to commissioners specially named. Two commissioners are required to execute the commission, who must themselves first take the following oath: "You shall, according to the best of your knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examination and deposition of all and every witness and witnesses, produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now produced and left with you. And you shall not publish, disclose, or make known to any person or persons whatsoever, except the clerk or clerks by you employed, and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of witnesses, or any of them, to be taken by you and the other commissioners in the commission named, or any of them, by virtue of the said commission, until publication shall pass by rule or order of the Court of ——: So help you God."

When the commissioners begin, they will put the first interrogatory to the first witness produced, and set down his answers thereto on a sheet entitled, "Depositions of witnesses sworn and examined," etc. When finished, they will fix and seal the several sheets together, and set their hands and seals at the bottom of the whole, and their hands to each sheet, leaving the covering sheet on the outside of the whole. They will then inclose the whole, com-

## SOUTH CAROLINA—CONTINUED.

mission and all, in a large paper, well sealed up, with their seals and names affixed thereto; and, having first indorsed the packet on a corner with the names of the parties, direct the same as pointed out in the commission.

## TENNESSEE.

If taken in the State, depositions may be taken before a justice of the peace, any clerk of the Court, mayor of a town or city, and notary public, or, if taken out of the State, by a commissioner of deeds, appointed by the governor of the State to reside therein, judge of a Court, or any one appointed on commission. When taken by a notary or commissioner, their official seals must be attached to the certificate. The deponent, or officer taking the deposition, must write the testimony, or some one agreed upon by the parties.

**140.** *Form of caption and certificate.*

JOHN DOE *vs.* RICHARD ROE.

In the —— Court of —— County, State of Tennessee [*here insert the names of plaintiffs or defendants, or their agents or attorneys present*].

Depositions of A B and C D, witnesses for the plaintiff [or defendant] in the above cause, taken upon notice [or interrogatories] on the —— day of ——, A. D. 18——, at ——, in the presence of ——.

The witness, A B, aged ——, being sworn, deposed as follows:

*Certificate.*

I, ——, do certify that the foregoing depositions were taken before me, as stated in the caption, and reduced to writing by me [or the witnesses]. And I further certify that I am not interested in the cause, nor of kin or counsel to either of the parties; and that I sealed them up and delivered them to ——, [or put them in the postoffice, or delivered them to the agent of the —— express company, at ——, to be forwarded by express, as the case may be] without their being out of my possession or altered after they were taken.

Given under my hand and seal, at ——, this —— day of ——, A. D. 18——.

—— ——, Commissioner.

## TEXAS.

When a commission is issued to take the testimony of a witness out of the State, in a criminal suit, it may be directed to a judge

TEXAS—CONTINUED.

or chancellor of a Superior Court of Law or Equity, or to a commissioner residing in the State. Paschal's Dig. Art. 3233.

In a civil suit, the deposition of a witness out of the State may be taken on commission directed to any public officer of any town, city, district, county, or State, or other political division of any government beyond the limits of this State. Paschal's Dig. Art. 3730.

In every case where depositions are taken under commission in criminal actions, the officer or officers taking the same shall certify that the person deposing is the identical person named in the commission; or, if they cannot certify to the identity of the witness, there shall be an affidavit of some person attached to the deposition, proving the identity, and the officer or officers shall certify that the person making the affidavit is known to them, and is worthy of credit. The official seal of each officer shall be attached to the certificate. Arts. 3239, 3240.

In a civil cause, the officer to whom any commission is directed, upon the appearance of the witness before him, shall take his answer to the interrogatories, which shall be reduced to writing, and shall be signed and sworn to by the witness; when the officer taking the same shall certify, under his hand and seal of office, that the answers were signed and sworn to by the witness before him, and seal them up in an envelope with the interrogatories and the commission, with his name across the seal, indorse the names of the parties to the suit, and the names of the witnesses, and direct the package to the clerk of the Court. Art. 3730.

If sent by mail, the postmaster must indorse on the envelope that he received it from the hands of the commissioner. If sent by private conveyance, the person who receives the same must make oath that it has not been out of his possession, and has undergone no alterations.

**141.** *Form of caption and certificate.*

STATE OF TEXAS, } ss.
County of ——, }

In accordance with a commission issued from the office of the clerk of the —— Court of —— County, in the State of Texas, in the case of John Doe *v.* Richard Roe, in said Court pending, to take the deposition of A B, a witness therein named, of lawful age, whom I caused to come before me at my office, in the ——, who, being by me duly sworn to make true answers to all such interrogatories as should be propounded to him, answered as follows:

When the deposition is completed, and the witness has signed his name thereto, then add the following:

TEXAS—CONTINUED.

*Certificate.*

STATE OF TEXAS, } ss.
County of ——, }

I, ——, do hereby certify that the foregoing answers were sworn to and subscribed by the witness, A B, before me.

Given under my hand and seal this —— day of ——, A. D. 18——. —— ——, Commissioner.

——o——

## VERMONT.

A commission may be issued to such person as the judge may appoint to take the testimony of any person residing or being without the State; and such testimony shall be taken either upon interrogatories, settled upon the order of such judge, or upon oral examination, as such judge shall direct. No agent, attorney, or person interested in any cause, shall write or draw up the deposition of any witness, to be used in such cause; and any deposition so written or drawn up, or returned to the clerk of the Court unsealed, or with the seal broken, shall be rejected by the Court.

142. *Form of caption and certificate.*

STATE OF VERMONT, } ss.
County of ——, }

At ——, in said county of ——, this —— day of ——, A. D. 18——, personally appeared A B, and made oath that the foregoing deposition, by him subscribed, contains the whole truth, and nothing but the truth. Before me, —— ——, Commissioner.

The above deposition was taken at the request of ——, to be used in a cause to be heard and tried by ——, [*here insert the style of the Court, or name of the judge by whom the case is to be tried, and the time and place of session*] in which cause John Doe is plaintiff and Richard Roe is defendant. The deponent [*state the reason of taking the deposition*] is the cause of the taking this deposition, and the adverse party was notified and did [or did not] attend.

—— ——, Commissioner.

——o——

## VIRGINIA.

In the State, a deposition may be taken without commission by a justice, or notary public, or by a commissioner in chancery; and if certified under his hand, may be received without proof of the signature to such certificate. Out of the State, a deposition may be taken on a commission directed to any commissioner appointed by the governor of this State, or to any justice or notary public of

VIRGINIA—CONTINUED.

the State wherein the witness may be. Any person or persons to whom a commission is so directed, may administer an oath to the witness, and take and certify the deposition with his official seal annexed; if he have none, then the genuineness of his signature shall be authenticated by some officer of the same State or country under his official seal, unless the deposition is taken by a justice out of this State, but in the United States, in which case his certificate shall be received without any seal annexed, or other authentication of his signature. Code of 1860, p. 726.

**143.** *Form of caption and certificate.*

STATE OF TEXAS, }
County of ——, } ss.

I, ——, do hereby certify that on the —— day of ——, 18——, at my office, between the hours of —— and ——, A B and C D, witnesses on behalf of the plaintiff, [or defendant] in a suit depending in the —— Court of ——, in the State of Virginia, came before me, and the said ——, A B, having been first duly sworn, deposeth and saith as follows:

And further, this deponent saith not. —— ——.

And the said C B, having been first duly sworn, deposeth and saith as follows:

And further, this deponent saith not. —— ——.

Which examination being completed, I now send and certify the same unto the said —— Court of the county of ——, in the State of Virginia.

In testimony whereof, I hereunto subscribe my name and affix my seal on the —— day of ——, 18——, at the place and between the hours specified. —— ——, Commissioner.

The depositions are then to be inclosed and the envelope sealed and directed as follows: To the Clerk of the —— Court of —— County, Virginia.

——o——

## WASHINGTON TERRITORY.

Either party may have the deposition of a witness taken in the Territory before any judge of the District Court, justice of the peace, clerk of the Supreme or District Courts, mayor of a city, or notary public. The deposition shall be written by the officer taking the same, or by the witness, or by some disinterested person, in the presence and under the direction of such officer. When completed, it shall be carefully read to or by the witness, corrected if desired, and subscribed by him, and certified by the officer substantially as follows:

## WASHINGTON TERRITORY—CONTINUED.

144. *Certificate.*

TERRITORY OF WASHINGTON, } ss.
County of ——, }

I, A B, justice of the peace in and for said county, [or judge, clerk, etc., as the case may be] do hereby certify that the above deposition was taken before me, and reduced to writing by myself, [or witness, as the case may be] at ——, in said county, on the —— day of ——, 18——, at —— o'clock, in pursuance of notice hereunto annexed; that the above-named witness, before examination, was sworn [or affirmed] to testify the truth, the whole truth, and nothing but the truth; and that the said deposition was carefully read to [or by] said witness, and then subscribed by him.

Dated at ——, the —— day of ——, 18——.

A B, Justice of the Peace.

Depositions may be taken out of the Territory on a commission issued to a person or persons, not exceeding three, agreed upon by the parties; or, if they do not agree, to any judge, justice of the peace, notary public, or other competent person selected by the Court.

The commission shall authorize the commissioner or commissioners to administer an oath to the witness, and to take his deposition in answer to the several interrogatories annexed, or, when the examination is to be without interrogatories, in respect to the question in dispute, to certify the deposition to the Court, and to direct to the clerk of the Court, or such other person designated or agreed upon, and forward to him by mail or other usual channel of conveyance. Laws of Washington, 1854–7, p. 193.

No form is prescribed; that used for depositions in the State will suffice.

## WEST VIRGINIA.

The same form and rules as were given for Virginia are adapted also to this State.

## WISCONSIN.

In the State, the deposition of a witness may be taken before any justice of the peace, or other person authorized by law to take depositions. 2 Taylor's Stat. 1587.

The deponent shall be sworn to testify the truth, the whole truth, and nothing but the truth, relating to the cause for which the deposition is taken, and he shall then be examined by the parties, if they think fit, or by the justice, and his testimony shall be taken in writing: p. 1588. The deposition of any witness without the State may be taken under a commission, issued to one or more

WISCONSIN—CONTINUED.

competent persons, in any State or country, by the Court in which the cause is pending.

The statute prescribes the following certificate in the State·

145. *Certificate.*

STATE OF WISCONSIN, } ss.
—— County, }

I, A B, justice of the peace in and for said county, do hereby certify that the above deposition was taken before me, at my office in the town of ——, in said county, on the —— day of ——, 18——, at —— o'clock; that it was taken at the request of the plaintiff, [or defendant] upon verbal [or written] interrogatories; that it was reduced to writing by myself [or by deponent, or by ——, a disinterested person, in my presence and under my direction]; that it was taken to be used in an action of A B *v.* C D, now pending in the —— Court, and the reason for taking it was [*here state the true reason*]; that —— attended at the taking of said deposition [or that a notice, of which the annexed is a copy, was served upon him on the —— day of ——, 18——]; that said deponent, before examination, was sworn to testify the truth, the whole truth, and nothing but the truth relative to said cause, and that said deposition was carefully read to [or by] said deponent, and then subscribed by him. Dated ——. A B, Justice of the Peace.

[2 Taylor's Stat. 1588.]

In the return of a deposition taken on commission out of the State, the following form is used:

*Form of caption and certificate.*

Deposition of witness produced, sworn, [or affirmed] and examined the —— day of ——, in the year one thousand eight hundred and ——, at ——, under and by virtue of a commission issued out of the —— Court of —— County, in a certain cause therein depending and at issue between John Doe, plaintiff, and Richard Roe, defendant, as follows:

A B, of ——, aged —— years and upwards, being duly and publicly sworn, [or affirmed] pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows, viz:

First. To the first interrogatory, he saith, etc.

When the witness has finished, he will subscribe, and the commissioner appends the following:

*Certificate.*

Examination taken, reduced to writing, and by the witness subscribed, this —— day of ——, A. D. 18——. Before me,

—— ——, Commissioner.

## WYOMING.

Depositions may be taken in this Territory before a judge or clerk of the Supreme or District Court, or before a probate judge, justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, or before a master commissioner, or any person empowered by a special commission.

Depositions may be taken out of the Territory by a judge, justice, or chancellor of any Court of Record, a justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, a commissioner appointed by the governor, or any person authorized by a special commission from the Territory. Comp. Laws of 1876, pp. 77–8.

The deposition shall be written in the presence of the officer taking the same, either by the officer, the witness, or some disinterested person, and subscribed by the witness. The deposition shall be sealed up and indorsed with the title of the cause and the name of the officer taking the same, and by him addressed and transmitted to the clerk of the Court where the action or proceeding is pending.

Officers herein authorized may authenticate their official character with their own seals. If the officer have no official seal, the deposition if not taken in the Territory shall be certified and signed by such officer, and shall be further authenticated, either by parol proof adduced in Court, or by the official certificate and seal of any secretary or other officer of State, keeping the great seal thereof, or by the clerk of the Court, having a seal attesting that such judicial officer was, at the time of taking the same, authorized to take such deposition. But if the deposition is taken under commission, this is not necessary.

The officer shall certify the following facts: 1. That the witness was first sworn to testify the truth, the whole truth, and nothing but the truth. 2. That the deposition was reduced to writing by some proper person, naming him. 3. That the deposition was written and subscribed in the presence of the officer certifying thereto. 4. That the deposition was taken at the time and place specified in the notice. Comp. Laws of 1876, p. 79.

These are substantially the same as required in the Ohio statute, and the form for that State may be used.

—o—

## IN UNITED STATES COURTS.

The United States Revised Statutes, Sec. 863, provide: "The testimony of any witness may be taken in any civil cause, depending in a District or Circuit Court, by deposition *de bene esse*, when the witness lives at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of the district in which the case is to be tried, and to a greater distance than one hundred miles from

## IN UNITED STATES COURTS—CONTINUED.

the place of trial, or when he is ancient or infirm. The deposition may be taken before any judge of any Court of the United States, or any commissioner of a Circuit Court, or any chancellor, justice, or judge of a Supreme or Superior Court, mayor or chief magistrate of a city, judge of a County Court or Court of Common Pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the cause. Reasonable notice must first be given in writing, by the party or his attorney proposing to take such deposition, to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness, and the time and place of the taking of his deposition; and in all cases *in rem*, the person having the agency or possession of the property at the time of seizure shall be deemed the adverse party, until a claim shall have been put in; and whenever, by reason of the absence from the district and want of an attorney of record, or other reason, the giving of the notice herein required shall be impracticable, it shall be lawful to take such depositions as there shall be urgent necessity for taking, upon such notice as any judge authorized to hold Courts in such circuit or district shall think reasonable and direct. Any person may be compelled to appear and depose as provided by this section, in the same manner as witnesses may be compelled to appear and testify in Court.

**146.** *Certificate of officer.*

[*Title of suit.*] Deposition of ——, for plaintiff.

STATE OF ——, } ss.
County of ——, }

I hereby certify that on the —— day of ——, A. D. 18——, before me ——, [*giving name and title in full*] at my office, ——, in the city of ——, between the hours of —— and ——, was produced to, and personally came before me, E F, the witness named in the notice hereunto annexed, to depose in a civil cause depending in the [Circuit Court of the United States for the —— district of ——], wherein A B is plaintiff and C D defendant; and that I was then and there attended by ——, Esq., counsel for plaintiff, and by ——, Esq., counsel for defendant. And the said E F, being of lawful age and sound mind, and being by me first duly examined, cautioned, and sworn to tell the truth, the whole truth, and nothing but the truth touching his knowledge of the matters and things in controversy in said civil cause, deposed and said as follows:

[*Here follows the testimony, which should be by question and answer as far as practicable, so as to indicate whatever objections may be offered.*]

I further certify that the foregoing deposition of E F was then and there reduced to writing by me, in the presence of the deponent, and to him, by me, carefully read over, and by him subscribed

## IN UNITED STATES COURTS—CONTINUED.

in my presence, after being so reduced to writing, and that the reason for taking such deposition was, and is, that the deponent, the witness E F, resides at ——, more than one hundred miles from ——, where said civil cause is appointed to be tried [or whatever the reason as pointed out in the statute].

I further certify that I am not of counsel or attorney to either of the parties to this suit, nor interested in the event of this cause; and that, it being impracticable for me to deliver said deposition with my own hand into the Court for which it was taken, I retained the same for the purpose of being sealed up by me, and speedily and safely transmitted by [mail] to the said Court for which it was taken, and to remain under my seal entire until opened; that the fee for taking the said deposition, $——, has been paid to me by ——, and that the same is just and reasonable for the service.

Given under my hand and seal, at ——, this —— day of ——, A. D. 18——. [*Signature and title.*]

[*Seal.*]

The title and number of the cause, and the Court wherein depending, should be indorsed on the back of the envelope, and it should be directed to the clerk of the Court where the case is pending. The commissioner, or officer taking the deposition, should write his name across the seal or wafer, and take the postmaster's [or his clerk's] receipt on the back.

# Forms of Protest and Notice.

147. *Protest for non-acceptance, English form.*

On this —— day of ——, one thousand eight hundred and ——, I, R B, a notary public, by lawful authority and sworn, dwelling in L——, in the county of L—— and United Kingdom of Great Britain and Ireland, at the request of C D, the holder, [or bearer, as the case may be] did exhibit the original bill of exchange, whereof a true copy is on the other side written, to a clerk in the counting-house [or office] of Messrs. Brown & Co., No. ——, —— Street, L——, the persons upon whom the same is drawn, and demanded acceptance thereof, when I received for answer that the said bill would not be accepted.

Wherefore, I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the drawers and indorsers of the said bill and all others concerned for all exchange, re-exchange, and all costs, damages, and interest, present and to come, for want of acceptance of the said bill.

Which I attest. R B, Notary Public.

[It will be observed that no certificate is made as to notice given, because, according to the common law, the notary is not obliged to give notice to indorsers, In American protests, there is generally embodied a certificate showing to whom notices were sent, and the manner of sending the same.]

148. *Protest for non-payment, English form.*

On this —— day of ——, [*as in the preceding form, but insert after "holder"*] did take [or exhibit] the original bill of exchange, whereof a true copy is on the other side written, at the counting-house [or office] of Messrs. Brown & Co., No. ——, —— Street, L——, where the said bill is made payable by the acceptance thereof, in order to present the same and demand payment thereof, and the door was found fastened, and the place shut up, and there was no person there to give an answer [or received for answer that the same would not be paid].

Wherefore, I, the said notary, at the request aforesaid, have protested, and by these presents do protest, against the drawers and indorsers of the said bill, and all others concerned, for all exchange,

re-exchange, and all costs, damages, and interest, present and to come, for want of payment of the said bill.

Which I attest. R B, Notary Public.

**149.** *Form in use in New York, for non-acceptance.*

UNITED STATES OF AMERICA,
State of New York, } ss.
County of New York,

On the —— day of ——, in the year of our Lord one thousand eight hundred and ——, at the request of M N, the holder, I, Holland Smith, a notary public of the State of New York, duly commissioned and sworn, dwelling in the city of New York, in the county of New York, did present the bill of exchange hereunto annexed, for —— dollars, to Y Z, at his place of business, No. ——, —— Street, in the city of New York, and demand acceptance thereof, which was refused.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well as against the drawer and indorsers of the said bill of exchange, as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages, and interest, already incurred and hereafter to be incurred, for want of acceptance of the said bill.

And I further certify that on the —— day of ——, 18——, due notice of the presentment and protest of the said bill of exchange was given by me to the maker and indorsers of the said bill of exchange, by depositing notices in the post-office, at the city of New York, (prepaying the postage thereon) directed as follows:

Notice for ——, [*insert name*] directed to —— [*insert residence*]. Notice for ——, directed to ——. Notice for ——, directed to ——.

Each of the above named places being the reputed place of residence of the person to whom notice was so addressed, and the post-office nearest thereto.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, at the city of New York, ——, this —— day of ——, 187——.

HOLLAND SMITH,
[*Notarial seal.*] Notary Public.

**150.** *For non-payment.*

UNITED STATES OF AMERICA,
State of New York, } ss.
County of New York,

On the —— day of ——, in the year of our Lord one thousand eight hundred and ——, at the request of M N, the holder, I, Holland Smith, a notary public of the State of New York, duly commissioned and sworn, dwelling in the city of New York, in the county of New York, did present the note hereunto annexed, for

—— dollars, at the —— bank, in the city of New York, the place where the same was payable, [or at the office of ——] and demanded payment thereof, which was refused [*or give whatever answer may be made; or if no one was there, state the fact*].

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well as against the maker and indorsers of the said note, as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages, and interest already incurred for want of payment of the said note.

And I further certify that on the —— day of ——, 18——, due notice of the presentment and protest of the said note was given by me to the maker and indorsers of the said note, by depositing notices in the post-office at the city of New York, (prepaying the postage thereon) directed as follows:

Notice for ——, [*insert name*] directed to —— [*insert place*]. Notice for ——, directed to ——. Notice for ——, directed to ——.

Each of the aboved named places being the reputed place of residence of the person to whom notice was so addressed, and the post-office nearest thereto.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, at the city of New York, this —— day of ——, 18——.

HOLLAND SMITH,
Notary Public.

[*Notarial seal.*]

151. *Form in use in California.*

UNITED STATES OF AMERICA,
State of California,
City and County of San Francisco, } ss

By this public instrument of protest, be it known, that on this —— day of ——, in the year of our Lord one thousand eight hundred and ——, at the request of M N, the holder of the original bill, [or note] whereof a true copy is on the reverse hereof written, I, Holland Smith, a notary public in and for the city and county of San Francisco, State of California, aforesaid, residing therein, duly commissioned and sworn, did this day present said bill [or note] to the acceptor [or maker] personally, at San Francisco, of whom I then and there demanded payment of said bill [or note] which was by him refused, [reason may be stated, if any given] [or, when it is payable at a particular place, state] at No. ——, —— Street, in the city of San Francisco, the place where said bill was payable, and demanded payment thereof, which was refused [or as the case may be].

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well as against the drawer or maker of the said bill, [or note] as against all others with whom it doth or may concern, for all exchange or re-exchange, damages, costs, charges, and interests, suffered or to be suffered, for want of payment [or acceptance, as the case may be] of said bill [or note].

Thus done and protested at said city and county of San Francisco, on the day and year aforesaid.

In testimony whereof, I grant these presents, under my signature, and the impress of my seal of office, at the city and county of San Francisco, on the day and year first above written.

[*Notarial seal.*] HOLLAND SMITH,
Notary Public.

[Then follows on the reverse side a copy of the instrument, *verbatim et literatim*, with the indorsements thereon, and the notary appends the following certificate:]

I, the undersigned notary, do hereby certify that the parties to the bill, [or note] whereof a true copy is above written, have been duly notified of the protest thereof by letters to them by me written, and addressed, dated on the day of the said protest, and served on them respectively in the manner following, viz: On A B, the indorser, said letter being by me delivered to ——, at the place of business of —— in said city and county of San Francisco, on the forenoon of the —— day of ——, 18——.

In faith whereof, I have hereunto signed my name, at the city and county of San Francisco, this —— day of ——, one thousand eight hundred and ——. HOLLAND SMITH,

[*Notarial seal.*] Notary Public.

[By the Civil Code of California, Sec. 3144, it is provided that notice may be given in three ways: 1. By delivering it to the party to be charged personally, at any place; or, 2. By delivering it to some person of discretion at the place of residence or business of such party, apparently acting for him; or, 3. By properly folding the notice, directing it to the party to be charged, at his place of residence, according to the best information that the person giving the notice can obtain, depositing it in the post-office most conveniently accessible from the place where the presentment was made, and paying the postage thereon.]

**152.** *Form in use in Massachusetts.*

COMMONWEALTH OF MASSACHUSETTS, } ss.
County of Suffolk, }

On this —— day of ——, in the year of our Lord one thousand eight hundred and ——, I, Holland Smith, notary public by legal authority admitted and sworn, and dwelling in the city of Boston, at the request of the holders [or give their names] of the city of Boston, went with the original bill of exchange, of which the foregoing is a true copy, [copy is prefixed] to the country house of M N, and presented the same to the said M N for acceptance, [or payment, as the case may be] when I received for answer that the same would not be accepted [or state whatever the real state of the facts may be].

Whereupon, I, the said notary, at the request aforesaid, have

protested, and by these presents do solemnly protest, against the drawer of said bill of exchange, indorsers, and all others concerned therein for exchange, re-exchange, and all costs, charges, damages, and interest suffered and sustained, or to be suffered and sustained, by reason of or in consequence of the non-acceptance of said bill of exchange.

Thus done and protested in Boston aforesaid, and my notarial seal affixed, the day and year last written.

[*Notarial seal.*] HOLLAND SMITH,
Notary Public.

153. *Form in Florida, as approved in Span v. Baltzell, 1 Fla. 301.*

TERRITORY OF FLORIDA, } ss.
Franklin County, }

By this public instrument of protest be it known, that on the 25th day of May, 1842, at the request of Geo. F. Baltzell, the holder of the original note, of which a true copy is hereon indorsed, I, Marshall P. Ellis, a notary public residing in the city of Appalachicola, qualified according to law, went to the office of the Southern Life Insurance Trust Co., and, presenting said note, demanded payment thereof from the cashier, who refused to pay the same—that no funds were deposited for that purpose.

Whereupon, I, the said notary, at the request aforesaid, do hereby solemnly and publicly protest the said note, as well against the drawer or maker thereof, as against the indorsers, and all persons who are or may be concerned therein, for all exchange, re-exchange, damages, costs, charges, and interest suffered or to be suffered for the non-payment of said note.

Thus solemnly done and protested.

Given under my hand and seal at Appalachicola, the day and year first above written. M. P. ELLIS,
Notary Public.

[This form was used thirty-five years ago, and it will be seen it is almost identical with that now in use; it is almost the same as that in use in California. In fact, there is no substantial difference between any of the forms given, except some are more formal than others.]

154. *Notice of protest for non-acceptance.*

To JOHN DOE: Take notice, that a bill of exchange for $500, dated at Boston, May 1st, 1876, payable ten days after sight, drawn by William West on Charles Cash, to the order of Smith & Co., and indorsed by you, has this day been duly protested for non-acceptance. HOLLAND SMITH,
Dated June 1st, 1876. Notary Public.

**155.** *Notice of protest for non-payment.*

To RICHARD ROE: Take notice, that a bill of exchange for $500, dated at Boston, May 1st, 1876, payable ten days after sight, drawn by Brown and Co. on Charles Cash, and accepted by him to the order of Francis Fish, and indorsed by you, has this day been duly protested for non-payment. HOLLAND SMITH,
Dated July 1st, 1876. Notary Public.

[In neither of these forms is it stated in the notice that the holder looks to the person to whom notice is sent, for payment; for the mere fact of sending the notice implies this. See the chapter on Negotiable Instruments. But it is, however, often so stated, as in the following forms:]

**156.** *Form of notice in use in California.*

STATE OF CALIFORNIA,
City of San Francisco, Nov. 1st, 1876.

SIR: Please take notice, that a certain bill of exchange, dated August 1st, 1876, for the sum of $1,000, payable at San Francisco, and drawn by Messrs. Brown & Co. in favor of James Smith, was this day presented by me, a notary public, to the acceptor, at his place of business, No. 14 California Street, San Francisco, and payment thereof demanded, which was refused, and the said bill having been dishonored, the same was this day protested by me for non-payment [or non-acceptance, as it may be] thereof, and the holder looks to you for the payment thereof, together with all costs, charges interest, expenses, and damages already accrued, or that may hereafter accrue thereon, by reason of the non-payment of said bill of exchange. Very respectfully yours, etc.,
To JOHN SMITH, ESQ., HOLLAND SMITH,
——— ——. Notary Public.

**157.** *Notice where note at bank has been protested.*

$1,000. BOSTON, November 1st, 1876.

Please take notice, that a promissory note, dated July 1st, 1876, signed by David Jones, payable to James Smith or order at the First National Bank in Boston, for the sum of one thousand dollars, indorsed by you, has been dishonored, payment having been duly demanded at its maturity, and that the said note has this day been protested for non-payment, and that the holder looks to you for the payment thereof. Yours, etc., HOLLAND SMITH,
To RICHARD BROWN, ESQ. Notary Public.

[It is unnecessary to give any further forms, as they all embody substantially the same particulars, namely: a description of the instrument dishonored, the fact that it was dishonored, and the notification that the holder looks to the party receiving notice for

indemnity, and even this last particular, though usual and proper, may be omitted without rendering the notice defective. See Sec. 120 of the chapter on Negotiable Instruments, where this is discussed.]

—o—

## SHIP PROTESTS.

NOTE.—On the arrival of a vessel in a port of destination, it is customary for the master to cause an entry or a note of a protest to be made, which is signed by him at the office of a notary. Drawn up in this manner, it usually contains certain particulars of the voyage, the port of departure, the name of the vessel, the time of entering the port of destination, and the nature of her cargo. The general mode of doing this is in a printed registry, which contains the formal parts, with proper blanks in which the above particulars are inserted. This ceremony is known as noting a protest, or entering a note of protest, which may be done on the day of arrival, or the next day, though it is claimed, according to commercial usage, it is not too late to do it forty-eight hours after the arrival in port.

But the more important occasions for entering or making a protest are when some mishap or accident befalls a vessel, disabling either the vessel or her crew, or injuring her cargo. The protest then becomes a very useful and important matter, as it may be the basis on which adjustment for losses may be made, and for reference in calculating general average. When some accident befalls a vessel during her voyage, it is the duty of the master, on the first convenient occasion, to proceed to the office of a notary at the first port he reaches, and cause an entry or note of protest of this to be made. But there is no obligation on him to put his vessel in any peril to reach a port in order to make this protest. Subsequently to this noting or entry of a protest, a more formal and regular protest is made after the arrival in port, by the master and others of the crew, generally the master, mate, and a seaman, who sign and declare to it before a notary, who may be the one before whom the first entry was made, or a different one.

There is no particular form prescribed for a ship protest; it generally consists of two parts: the first is a statement or declaration of the facts and circumstances of the voyage, and the storms or bad weather which the vessel may have encountered, or any accidents which may have happened during the course of the voyage; and the other is the part in which the appearers or the notary, or both the appearers or the notary, protest against the accidents or causes of the injury, and against all loss or damage occasioned thereby, and at the end is an attestation or certificate under the hand and seal of the notary.

The protesting part need not be spun out to any length; it is a mere form, and a few words are sufficient. For example, in case of damage or injury by storms or stress of weather, it may be as follows:

"The appearers, A B, C D, and E F, do protest, and I, the undersigned notary, do also protest, against the bad weather, gales, storms, accidents, and occurrences mentioned in the foregoing statement, [or hereunto annexed, as the case may be] and all loss or damage occasioned thereby"; and it concludes with an attestation or short certificate, under the hand and seal of the notary, to the effect that it was declared and protested in due form.

The statutes of the United States (Rev. Stat. Sec. 2891) provide: "If any vessel from any foreign port, compelled by stress of weather or other necessity, shall put into any port of the United States, not being destined for the same, the master, together with the mate, or person next in command, may, within twenty-four hours after her arrival, make protest in the usual form upon oath before a notary public, or other person duly authorized, or before the collector of the district where the vessel arrives, setting forth the cause or circumstances of such distress or necessity. Such protest, if not made before the collector, shall be produced to him, and to the naval officers, if any, and a copy thereof lodged with him or them. The master shall also, within forty-eight hours after such arrival, make report in writing, to the collector, of the vessel and her cargo, as is directed hereby to be done in other cases."

**158.** *Entry or note of a ship protest.*

UNITED STATES OF AMERICA,
State of California,
City and County of San Francisco, } ss.

On this 1st day of February, in the year one thousand eight hundred and seventy-seven, personally appeared before me, the undersigned, a notary public for the State of California, at my office, No. 309 Montgomery Street, in the city of San Francisco, Peter Brine, master of the ship or vessel *Thyra*, of Bristol, England, and declared that said ship sailed on a voyage from Charleston, in the United States of America, on the first day of November last, bound for Portland, Oregon, with a cargo of hardware, but that in the prosecution of her voyage [*here state fully the particulars of the accident, etc.*].

Wherefore, the said master doth hereby give notice of his intention of protesting against the aforesaid matters and things, accidents and occurrences, and all damage and loss sustained thereby, and causes this note or minute of all and singular the premises to be entered.

PETER BRINE,
Master.

HOLLAND SMITH,
Notary Public.

[This note or memorandum must be entered in a book of "Ship Protests," to be kept by the notary. The outline of the form may be printed, with blanks in which the particular circumstances of the case are written. A certified copy of this noting may be given to the master.]

159. *Regular or extended ship protest.*

UNITED STATES OF AMERICA,
State of California,
City and County of San Francisco, } ss.

By this public instrument of declaration and protest, be it known: That on this second day of February, in the year one thousand eight hundred and seventy-seven, before me, Holland Smith, a notary public for the State of California, duly commissioned and sworn, and dwelling in the city of San Francisco, in said State, personally came and appeared Peter Brine, master and commander of the ship or vessel the *Thyra*, belonging to Bristol, England; also John Mainsell, first mate, and James Quick and Thomas Crosstree, seamen of said ship, who did, upon oath duly administered, severally and solemnly declare and state as follows [*here give a full statement of the particulars that occasion the protest*].

And the said Peter Brine, master, further declares that on the day of the arrival of the said ship at this port, he appeared at the office of ——, [*insert name*] a notary public for the State of California, in said city of San Francisco, and duly noted and entered his protest, and now extends the same.

Wherefore, these appearers, as well as I, the said notary, do protest against all and singular the premises, the aforesaid bad weather, gales, storms, winds, high seas, accidents, casualties, occurrences, and all loss, damage, and expense sustained thereby or arising therefrom.

PETER BRINE, Master.
JOHN MAINSELL, Mate.
JAMES QUICK, Seaman.
THOMAS CROSSTREE, Seaman.

Thus declared, protested, subscribed, and sworn to, at the city of San Francisco, the day and year aforesaid, before me, and I have hereunto set my hand and seal of office. HOLLAND SMITH,
[*Seal.*] Notary Public.

# Forms of Legal Instruments.

**160.** *Deed with full covenants and warranty.*

This indenture, made the —— day of ——, in the year one thousand eight hundred and seventy ——, between —— and ——, his wife, of the city of ——, in the county of ——, State of ——, parties of the first part, and ——, of the same place, party of the second part, Witnesseth: That the said parties of the first part, for and in consideration of the sum of —— dollars, lawful money of the United States, to them in hand paid by the same party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, forever released and discharged from the same, by these presents, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all that certain [*here insert a description of the premises*]; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also, all the estate, right, title, interest, dower, right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, and to the same, and every part and parcel thereof, with the appurtenances. To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party hereto of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever. [*Here insert a description of any incumbrance to which the premises are subject.*]

And the said ——, for himself, his heirs, executors, and administrators, doth covenant, grant, and agree to and with the same party of the second part, his heirs and assigns, that the said ——, at the time of the sealing and delivery of these presents, is lawfully seized, in his own right, of a good, absolute, and indefeasible estate of inheritance in fee-simple, of and in, all and singular, the above granted, bargained, and described premises, with the appurtenances, (subject as aforesaid) and hath good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid. And that the said party of the second

part, his heirs and assigns, shall and may, at all times thereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances; without any let, suit, trouble, molestation, eviction, or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same, and that the same now are free, clear, discharged, and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and incumbrances of what nature and kind soever (except as aforesaid). And also, that the said parties of the first part, and their heirs, and all and every other person or persons whatsoever, lawfully or equitably deriving any estate, right, title, or interest of, in, or to the hereinbefore granted premises, by, from, under, or in trust for them, shall and will, at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in law, of the said party of the second part, his heirs and assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said party of the second part, his heirs or assigns, or his counsel learned in the law, shall be reasonably devised, advised, or required.

And the said —— and his heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part, their heirs, and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

—— —— [*Seal.*]
—— —— [*Seal.*]

Sealed and delivered in the presence
of —— ——.

[This is the form of deed generally used in New York, New Jersey and Pennsylvania, and nearly all the Eastern States. This is the highest and most satisfactory form of conveyance. It gives the greatest assurance to the grantee, as it contains full covenants, which, on examination, may be divided into those *present* and those for the *future*. First, there are three referring to the present, that is (1) a covenant as to title; (2) as to power to convey; (3) as to incumbrances. And as to the future, there are covenants: (1) for quiet enjoyment; (2) as to defending title against the acts of others; and (3) as to the grantor's own acts. In some of our States, the forms of conveyances are much simplified by statute, as will appear from those afterward given.]

**161.** *Form of deed prescribed by Civil Code in California.*

I, A B, grant to C D all that real property situated in —— [*insert name of county*] County, State of California, bounded [or described] as follows: [*here insert description, or if the land sought to be conveyed has a descriptive name, it may be described by the name, as, for instance,* "*The Norris Ranch.*"]

Witness my hand this —— [*insert day*] day of ——, [*insert month*] 18——. A—— B——.

[It will be observed that this form omits the recital of a consideration; but such a recital is unnecessary under the law of California, as it is provided that the writing imports of itself a consideration. Though this form is prescribed by statute, it is not in general use, because it contains no warranties, and the practice is, on most occasions, to use the longer forms.]

**162.** *Warranty deed, California form.*

This indenture, made the —— day of ——, in the year of our Lord one thousand eight hundred and seventy ——, between ——, of ——, the party of the first part, and ——, of ——, the party of the second part, Witnesseth: That the said party of the first part, for and in consideration of the sum of —— dollars of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, —— [*here give description of property*]. Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

And the said party of the first part, and his heirs, the said premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said party of the first part, and his heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents ever defend.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

—— ——. [*Seal.*]

Signed, sealed, and delivered in the presence of —— ——.

**163.** *Warranty deed, Illinois form.*

This indenture, made this —— day of ——, in the year of our Lord one thousand eight hundred and seventy——, between ——,

of the ——, in the county of —— and State of ——, party of the first part, and ——, of the ——, in the county of —— and State of ——, party of the second part, Witnesseth: That the said party of the first part, for and in consideration of the sum of —— dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, has bargained, sold, remised, released, conveyed, aliened, and confirmed, and by these presents does grant, bargain, sell, remise, release, convey, alien, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all the following described lot, piece, or parcel of land, situated in the county of —— and State of ——, and known and described as follows, to wit: [*here give a description of the property*] together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, or demand whatsoever, of the said party of the first part, either in law or equity, of, in, and to the above bargained premises, with the hereditaments and appurtenances. To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever; and the said party of the first part for his heirs, executors, and administrators, does covenant, grant, bargain, and agree, to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, he was well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law, in fee-simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances, of what kind and nature soever. And the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every other person or persons lawfully claiming, or to claim, the whole or any part thereof, the said party of the first part shall and will warrant and forever defend. And the said party of the first part hereby expressly waives and releases any and all right, benefit, privilege, advantage, and exemption, under or by virtue of any and all statutes of the State of Illinois, providing for the exemption of homesteads from sale, on execution or otherwise.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

—— ——. [*Seal.*]

Signed, sealed, and delivered in the presence of —— ——.

**164.** *Warranty deed in Illinois, Statutory form.*

The grantor, ——, of the ——, in the county of —— and State of ——, for and in consideration of —— dollars in hand paid, conveys and warrants to ——, of the ——, county of —— and State of ——, the following described real estate, to wit: [*here give a description of the property*] situated in the county of ——, in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this State.

Dated this —— day of ——, A. D. 18——.

—— ——. [*Seal.*]

Signed, sealed, and delivered in presence of —— ——.

**165.** *Kansas warranty deed.*

Know all men by these presents, that ——, in consideration of —— dollars to him paid by ——, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, and convey to the said ——, his heirs and assigns forever, [*here give a description of the property*] and all the estate, title, and interest of the said ——, either in law or in equity, of, in, and to the said premises, together with all the privileges and appurtenances to the same belonging, and all the rents, issues, and profits thereof. To have and to hold the same to the only proper use of the said ——, his heirs and assigns forever.

And the said ——, for himself and for his heirs, executors, and administrators, does hereby covenant with the said ——, his heirs and assigns, that he is the true and lawful owner of the said premises, and has full power to convey the same; and that the title so conveyed is clear, free, and unincumbered; and further, that he will warrant and defend the same against all claim or claims of all persons whomsoever.

In witness whereof, the said —— has hereunto set his hand and seal, this —— day of ——, in the year of our Lord one thousand eight hundred and seventy ——. —— ——. [*Seal.*]

Signed, executed, and acknowledged in presence of us, —— ——.

—— ——.

**166.** *Kentucky warranty deed.*

Know all men by these presents, that ——, of ——, for and in consideration of —— dollars, to him paid by ——, of ——, the receipt whereof is hereby acknowledged, does hereby bargain, sell, and convey to the said ——, his heirs and assigns forever, the following described real estate, to wit: [*here give description of the property*]; together with all the privileges and appurtenances to the same belonging. To have and to hold the same to the said ——, his heirs and assigns forever, the grantor, his heirs, executors, and administrators hereby covenanting with the grantee, his heirs and

assigns, that the title so conveyed is clear, free, and unincumbered, and that he will warrant and defend the same against all legal claims whatsoever.

In witness whereof, the said —— has hereunto set his hand, this —— day of ——, in the year 187——.

Teste:

167. *Quitclaim deed in use in New York.*

This indenture, made the —— day of ——, in the year one thousand eight hundred and seventy ——, between ——, of the city of New York, county of New York, and State of New York, party of the first part, and ——, of the city of Rochester, county of Monroe, and State of New York, party of the second part, Witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath remised, released, and quitclaimed, and by these presents doth remise, release, and quitclaim unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece, or parcel of land, [*here insert full description*] together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

—— ——. [*Seal.*]

Sealed and delivered in the presence of —— ——.

[The form of quitclaim in use in California is identical with this in New York.]

168. *Illinois quitclaim deed, statutory form.*

The grantor, ——, of the ——, in the county of —— and State of ——, for the consideration of —— dollars, conveys and quitclaims to ——, of the ——, county of —— and State of ——, all interest in the following described real estate: [*here give description of property*]; situated in the county of —— in the

State of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this State.

Dated this —— day of ——, A. D. 18——.

—— ——. [*Seal.*]

Signed, sealed, and delivered in presence of —— ——.

169. *Quitclaim deed, Michigan form.*

This indenture, made the —— day of ——, in the year of our Lord one thousand eight hundred and seventy ——, between ——, of the ——, party of the first part, and ——, of the ——, party of the second part, Witnesseth: That the said party of the first part, for and in consideration of the sum of —— dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, does by these presents grant, bargain, sell, remise, release, and forever quitclaim unto the said party of the second part and to his heirs and assigns forever [*here give description of property*]. Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining. To have and to hold the said premises to the said party of the second part, and to his heirs and assigns, to the sole and only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

—— ——. [*Seal.*]

Signed, sealed, and delivered in presence of —— ——.

[There is not much variance in the forms of quitclaim deeds in use in our various States. Such a form of a deed is generally given when a person relinquishes some claim or title to property, and when he gives up a right which he holds in common with others. In these cases, it is the simplest and most direct method to release his interest and title, as well as convey that interest. This form of deed has long been in use in this country. Washburne, Real Prop. Vol. 3, p. 809.

The operative words of release in a simple quitclaim deed are, "remise, release, and quitclaim"; but where the words "bargain, sell, and quitclaim" are employed, they operate, not merely to release, but to transfer any interest which the grantor possesses at the execution of the deed. Touchard *v.* Crow, 20 Cal. 150. A grantee under a quitclaim deed can maintain ejectment under it, if his grantor could have done so. Sullivan *v.* Davis, 4 Cal. 291; Carpentier *v.* Williamson, 25 Cal. 168.]

170. *Mortgage—form in use in New York.*

This indenture, made the —— day of ——, in the year one thousand eight hundred and seventy ——, between A B and C D, his wife,

of the city, county, and State of New York, parties of the first part, and M N, of the ——, of ——, county of ——, and State aforesaid, party of the second part: Whereas, the said A B is justly indebted to the said party of the second part in the sum of five thousand dollars, lawful money of the United States of America, secured to be paid by his certain bond or obligation, bearing even date with these presents, in the penal sum of ten thousand dollars, lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of five thousand dollars, on the first day of July, in the year one thousand eight hundred and seventy-seven, with interest thereon at and after the rate of seven per cent. per annum, payable semi-annually on the first days of January and July, in each and every year, which said bond also contains an agreement that should any default be made in the payment of the said interest or any part thereof, on any day whereon the same is made payable as above expressed, and should the same remain unpaid and in arrear for the space of thirty days, that then and from thenceforth, that is to say, after the lapse of the said thirty days, the aforesaid principal sum of five thousand dollars, with all arrearage of interest thereon, shall, at the option of the said party of the second part, or his legal representatives, become and be due and payable immediately thereafter, although the time limited for the payment thereof may not then have expired, anything in the said bond contained to the contrary thereof in anywise notwithstanding: as by the said bond or obligation, and the condition thereof, and the said agreement therein contained, reference being thereto had may more fully appear. Now this indenture Witnesseth: That the said parties of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all [*here insert full description; and if the mortgage is given to secure part of the purchase-money, add at the end of this clause:* Being the same premises conveyed to the said party of the first part by the said party of the second part, by deed bearing even date herewith, and this mortgage is given to secure part of the consideration or purchase-money in such deed expressed.] Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also, all the estate, right, title, interest, dower, right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances. To have and to hold the above granted

and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever. Provided always, and these presents are upon this express condition, that if the said parties of the first part, their heirs, executors, or administrators, shall well and truly pay unto the said party of the second part, his executors, administrators, or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine, and be void. And the said A B, for himself, his heirs, executors, and administrators, doth covenant and agree to pay unto the said party of the second part, his executors, administrators, or assigns, the said sum of money and interest, as mentioned above, and expressed in the condition of the said bond. And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the said party of the second part, his executors, administrators, or assigns, to enter into and upon all and singular the premises hereby granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said parties of the first part, their heirs, executors, administrators, or assigns therein, at public auction, according to the act in such case made and provided. And as the attorney of the said parties of the first part, for that purpose by these presents duly authorized, constituted, and appointed to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same, in fee-simple, and out of the money arising from such sale to retain the principle and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money [if any there shall be] unto the said A B, party of the first part, his heirs, executors, administrators, or assigns, which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said parties of the first part, their heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under him, them, or either of them. [*If an insurance clause is desired, insert the following:* And it is expressly agreed, by and between the parties hereto, that the said A B will keep the buildings, erected and to be erected upon the lands herein described, insured against loss and damage by fire, by insurers, in an amount of at least five thousand dollars, and assign the policy and renewals thereof to the said ——, and in default thereof, it shall be lawful for the said —— to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount secured by these presents, and payable on demand, with interest at the rate of seven per cent. per annum.]

In witness whereof, the parties of the first part to these presents

have hereunto set their hands and seals, the day and year first above written.

A—— B——. [*Seal.*]
C—— D——. [*Seal.*]

Sealed and delivered in the presence of ——.

[In case the mortgage be given to secure part of the purchase-money of the premises, the wife of the mortgagor need not join in its execution, as her interest is secondary to that of a purchase-money mortgage.]

**171.** *Mortgage in use in California.*

This indenture, made the —— day of ——, in the year of our Lord one thousand eight hundred and seventy ——, between ——, party of the first part, and ——, the party of the second part, Witnesseth: That the said party of the first part, for and in consideration of the sum of —— dollars, —— of the United States of America, to him in hand paid, does by these presents grant, bargain, sell, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain piece or parcel of land situate in the ——, county of ——, State of ——, bounded and described as follows: ——, [*here give description of property*] together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining. This conveyance is intended as a mortgage to secure the payment of ——, and all these presents shall be void if such payment be made (according to the tenor and effect thereof). But in case default be made in the payment of the principal or interest as —— provided, then the said party of the second part, his executors, administrators, and assigns, are hereby empowered to sell the said premises, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law, and, out of the money arising from such sale, to retain the said principal and interest, together with the costs and charges of making such sale, and —— per cent. for attorney's fees, and the overplus, if any there be, shall be paid by the party making such sale, on demand, to the said party of the first part, his heirs or assigns.

In witness whereof, the said party of the first part hath hereunto set his hand and seal, the day and year first above written.

—— ——. [*Seal.*]
—— ——. [*Seal.*]

Signed, sealed, and delivered in the presence of —— ——.
—— ——.
—— ——.

**172.** *Mortgage, Illinois form.*

This indenture, made this —— day of ——, in the year of our Lord one thousand eight hundred and seventy ——, between ——.

of the ——, party of the first part, and ——, of the ——, party of the second part, Witnesseth: That whereas the said —— is justly indebted unto the party of the second part in the sum of —— dollars, and, as evidence of which, the said —— has executed and delivered to the said party of the second part, certain promissory notes, bearing even date herewith, payable to the order of the said party of the second part, as follows, to wit: [*here give amount and description of notes or other security*]. And whereas, the said party of the first part, in consideration of the premises, and for the purposes aforesaid, and in further consideration of one dollar, to him in hand paid, does hereby grant, bargain, sell, and convey, unto the said party of the second part, his heirs and assigns, all the following described lands and premises, situated in the ——, county of ——, and State of Illinois, to wit: [*here give a full description of the property*]. To have and to hold the same, together with all and singular the tenements, hereditaments, privileges, and appurtenances thereto belonging, to the said party of the second part, his heirs and assigns, to their sole use and benefit forever. Provided always, and these presents are upon this express condition, that if the party of the first part, his heirs, executors, administrators, or assigns, shall well and truly pay or cause to be paid to the party of the second part, his heirs, executors, administrators, or assigns, the promissory notes, interest, and moneys herein secured to be paid, at the time and in the manner specified in said promissory notes, and in the covenants herein contained, according to the true intent and meaning thereof, then, and in that case, these presents shall be and become absolutely null and void.

But it is further provided and agreed, that if default shall be made in the payment of either of the indebtedness or moneys aforesaid, secured by this instrument, whether for principal or interest, on the day on which the same, or either thereof, shall become due and payable, then this mortgage may thereupon, at any time, be foreclosed, for the payment or satisfaction of the whole of the indebtedness and moneys aforesaid; and said foreclosure may be either by judicial proceedings, or the party of the second part, his heirs, executors, administrators, or assigns, either in person or by his or their attorney, may sell and dispose of the said premises, and all the right, title, benefit, and equity of redemption of said party of the first part, his heirs or assigns therein, at public auction, at either door of any building which may be occupied as a court-house, in the city of ——, in the State of Illinois, or on said premises, as may be specified in the notice of such sale, for the highest and best price the same will bring in cash, at least —— days' public notice having been previously given of the time and place of such sale, by advertisement in one of the newspapers at that time published in said city of ——, and, either in person or by attorney, make, execute, and deliver, to the purchaser or purchasers at such sale, good and sufficient deed or deeds of conveyance for the premises sold; and out of the proceeds or avails of such sale, and the purchase-money paid thereon, after paying all costs of such advertising and sale, including all moneys advanced for insurance, taxes, and assess-

ments, or other liens, with the interest thereon, to pay the principal of said notes, whether due and payable by the terms thereof or not, and the interest due or accrued on said notes up to the time of such sale, rendering the overplus [if any] unto the said party of the first part, his legal representatives or assigns, on reasonable request; and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase-money; which sale or sales, so made, shall be a perpetual bar, both in law and equity, against the said party of the first part, his heirs and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, from, through, or under said party of the first part, or any of them.

And in addition to the efficacy which such deed or deeds of conveyance might otherwise have in evidence as a muniment or muniments of title, [and not limitation or restriction of such efficacy] such deed or deeds shall also, as against the party of the first part, his heirs and assigns, and in favor of the party of the second part, his heirs and assigns, or the grantee or grantees named in such deed or deeds, his or their heirs and assigns, when produced in any Court of Law or Equity, or elsewhere, be and be taken as good and sufficient prima facie evidence of the due and legal execution, in all respects, of the power of sale above granted, and of the due observance of all preliminaries and conditions necessary to the validity of such sale, and of such deed or deeds, whether such observance thereof shall be in such deed or deeds especially or in detail recited or not; and any and all recitals which shall be made in such deed or deeds, shall, in any Court of Law or Equity, or elsewhere, be and be held to be, as against the party of the first part, his heirs and assigns, good and sufficient prima facie evidence of the truth of the matters and things therein recited.

The said party of the first part hereby covenants, declares, and agrees, that in case default shall be made in the payment of any or either of the indebtedness or moneys aforesaid, whether for principal or interest, or of the taxes hereinafter mentioned, on the day on which the same, or either thereof, shall become due and payable, or in the procuring, assigning, and deposing of the policies of insurance, as is hereinafter specified, then all and each of the moneys secured to be paid by this indenture shall, upon any such default, become immediately due and payable, anything herein, or in said promissory notes contained, to the contrary notwithstanding.

And the said party of the first part, for the purpose of enabling said party of the second part to make an advantageous and judicious sale of said premises, does hereby authorize and empower him to adjourn said sale from time to time, at the discretion of said party of the second part; and also to sell said premises entire, without division, or in parcels, as the said party of the second part may think best.

And the said ——, party of the first part, hereby expressly waives and releases any and all rights in respect to the above granted lands, to him secured by the statutes of the said State of Illinois relating to the alienation and exemption of homesteads.

And the said ——, for himself and his heirs, executors, and administrators, covenants and agrees to and with the said party of the second part, and his heirs and assigns, that at the time of the ensealing and delivery of these presents he was well seized of said premises in fee-simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form as aforesaid; that the same are free and clear of all liens and incumbrances whatsoever; that the said party of the first part will, in due season, pay all taxes and assessments on said premises, and exhibit once a year, on demand, to said party of the second part, receipts of the proper persons, showing payment thereof, until the indebtedness aforesaid shall be fully paid; and will keep all buildings that may at any time be on said premises, during the continuance of said indebtedness, insured in such company or companies as the party of the second part, his heirs, executors, administrators, and assigns, may direct, for such sum or sums as such company or companies will insure for, not to exceed the amount of —— dollars, and will assign, with proper consent of the insurers, the policy or policies of insurance to, and deposit the same with, said party of the second part, as further security for the indebtedness aforesaid; and in case said party of the first part shall fail so to keep said buildings insured, and to pay said taxes and assessments, then the party of the second part shall have full right, power, and authority to pay the same, and the amount so paid shall constitute a part of the debt secured by this instrument, and upon sale of the land hereunder, shall, with the amount of said notes and interest, be paid to the party of the second part, his heirs, executors, administrators, and assigns, with interest thereon at the rate of —— per cent. per annum.

A reconveyance of said premises shall be made to said party of the first part, his heirs or assigns, at his expense, on full payment of the indebtedness aforesaid, and full performance by them of the covenants and agreements herein made by the party of the first part.

In witness whereof, the party of the first part has hereunto set his hand and seal, on the day and year first above written.

—— ——. [*Seal.*]
—— ——. [*Seal.*]

Signed, sealed, and delivered in
the presence of —— ——.
—— ——.

173. *Mortgage with dower, Ohio form.*

Know all men by these presents, that ——, and ——, his wife, of the ——, in consideration of —— dollars, to them paid by —— of the ——, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey to the said ——, his heirs and assigns forever, ——, [*here give full description of property*] and all the estate, title, interest, of the said ——, either in law or equity,

of, in, and to the said premises, together with all the privileges and appurtenances to the same belonging, and all the rents, issues, and profits thereof. To have and to hold the same to the only proper use of the said ——, his heirs and assigns forever. And the said ——, for himself and for his heirs, executors, and administrators, does hereby covenant with the said ——, his heirs and assigns, that he is the true and lawful owner of the said premises, and has full power to convey the same, and that the title so conveyed is clear, free, and unincumbered; and further, that he will warrant and defend the same against all claim or claims of all persons whomsoever.

Provided, nevertheless, that the said —— shall perform fully the condition of his certain bond of even date herewith, given to the said ——, [or pay unto the said —— the amount of two certain promissory notes, dated ——, and respectively for the amount of —— dollars] then these presents shall be void.

In witness whereof, the said ——, and the said ——, his wife, hereby releasing her right and expectancy of dower in the said premises, have hereunto set their hands and seals, this —— day of ——, in the year of our Lord one thousand eight hundred and seventy——.

—— ——. [*Seal.*]
—— ——. [*Seal.*]

Signed, sealed, and acknowledged in
presence of us, —— ——.
—— ——.

**174.** *Mortgage, Michigan form.*

This indenture, made this —— day of ——, in the year of our Lord one thousand eight hundred and seventy ——, between ——, party of the first part, and ——, party of the second part, Witnesseth: That the said party of the first part, for and in consideration of the sum of —— dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, remised, released, enfeoffed, and confirmed, and by these presents does grant, bargain, sell, remise, release, enfeoff, and confirm unto the said party of the second part, and to his heirs and assigns forever, all [*here give full description of property*]: together with the hereditaments and appurtenances thereunto belonging, or in anywise appertaining. To have and to hold the above bargained premises unto the said party of the second part, and to his heirs and assigns, to the sole and only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever; and the said party of the first part, for himself, and for his heirs, executors, and administrators, doth covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he was well seized of said premises in fee-simple; that they are free from all incumbrances and charges whatever, and that he will, and his heirs, executors, administrators, and assigns shall forever warrant

and defend the same against all lawful claims whatsoever. Provided always, and these presents are upon the express condition, that if the said party of the first part shall, and do, well and truly pay, or cause to be paid, to the said party of the second part the sum of five thousand dollars, lawful money of the United States, according to a certain bond, bearing even date herewith, executed by ——, the party of the first part, to said party of the second part, to which these presents are collateral: and shall also pay, or cause to be paid, all taxes and assessments, of whatever nature, which may be levied upon said premises above described, as soon and as often as the same may become due and payable.

And the said first party doth hereby covenant and promise to and with said second party, his representatives and assigns, that he, the said first party, will pay to said second party the full sum of five thousand dollars, with interest as above provided.

And it is also agreed, by and between the parties to these presents, that the said party of the first part shall and will keep the buildings, erected and to be erected, upon the lands above conveyed, insured against loss and damage by fire, by insurers, and in amount approved by the said party of the second part, and assign the policy and certificates thereof to the said party of the second part; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount secured by these presents, and payable on demand, with interest, at the rate of ten per cent per annum. And shall further keep and perform all covenants and agreements hereinafter made, then these presents and said bond shall cease and be null and void.

And it is hereby expressly agreed, that should any default be made in the payment of the said interest, taxes, assessments, or insurance, or any part thereof, on any day whereon the same is made payable, as above expressed, and should the same remain unpaid and in arrear for the space of thirty days, then and from thenceforth, that is to say, after the lapse of the said thirty days, the aforesaid principal sum of five thousand dollars, with all arrearage of interest thereon, and all taxes, assessments, and insurance unpaid, shall, at the option of said obligee, his executors, administrators, or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in anywise notwithstanding.

And it is further expressly agreed, that as often as any proceeding is taken to foreclose this mortgage, as hereinafter provided, or in chancery, said first party shall pay to said second party —— dollars, as a reasonable attorney or solicitor's fee therefor, in addition to all other legal costs.

And upon default being made in any condition of this mortgage, or in case of the non-payment of the said sum of five thousand dollars, or of the interest thereof, or of said taxes, assessments, or insurance, or any part of said principal or interest, taxes, assess-

ments, or insurance, or if the principal becomes due and payable, as aforesaid, by reason of the non-payment of interest, taxes, assessment, or insurance, at the time, in the manner, and at the place above limited and specified for the payment thereof, then and in such case it shall and may be lawful for the said party of the second part, his heirs, executors, administrators, or assigns, and the said party of the first part doth hereby empower and authorize the said party of the second part, his heirs, executors, administrators, or assigns, to grant, bargain, sell, release, and convey the said premises, with the appurtenances, at public vendue, and on such sale to make and execute to the purchaser or purchasers, his, her, or their heirs and assigns forever, good, ample, and sufficient deed or deeds of conveyance in law, pursuant to the statute in such case made and provided, rendering the surplus moneys (if any there should be) to the said party of the first part, his heirs, executors, or administrators, after deducting the amount then due, the said attorney or solicitor's fee, and the costs and charges of such vendue and sale aforesaid.

In witness whereof, the party of the first hath hereunto set his hand and seal, the day and year first above written.

—— ——. [*Seal.*]
—— ——. [*Seal.*]

Signed, sealed, and delivered in
presence of —— ——.

**175.** *Mortgage, short form, for State of Indiana.*

This indenture witnesseth that ——, of —— County, in the State of ——, mortgages and warrants to ——, of —— County, in the State of ——, the following real estate in —— County, in the State of ——, to wit: [*here give description of property*] to secure the payment, when it becomes due, of —— dollars, being the unpaid balance of the purchase-money for the above-described real estate; and the mortgagor expressly agrees to pay the sum of money above secured without relief from valuation or appraisement laws.

In witness whereof, the mortgagor hath hereunto set his hand and seal, this —— day of ——, 187——.

—— ——. [*Seal.*]

**176.** *Assignment of mortgage—New York form.*

Know all men by these presents, that I, ——, of the city of ——, county of ——, and State of New York, party of the first part, in consideration of the sum of five thousand dollars, lawful money of the United States, to me in hand paid by ——, of the city of ——, county of ——, and State of New York, party of the second part, at or before the ensealing of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain,

sell, assign, transfer, and set over unto the said party of the second part, a certain indenture of mortgage, bearing date the first day of March, one thousand eight hundred and seventy-five, made by —— and ——, his wife, of the city of New York, to me, to secure the payment of five thousand dollars and interest, and which said mortgage was recorded in the office of the register of the city and county of New York, on March 2d, 1875, in liber 100 of mortgages, at page 100, [*if there have been previous assignments, recite names, dates, and records*] together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. To have and to hold the same, unto the said party of the second part, his executors, administrators, and assigns, forever, subject only to the proviso in the said indenture of mortgage mentioned, and I do hereby make, constitute, and appoint the said party of the second part my true and lawful attorney, irrevocable in my name, or otherwise, but at his proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest; and in case of payment, to discharge the same as fully as I might or could do if these presents were not made.

In witness whereof, I, the said party of the first part, have hereunto set my hand and seal this first day of July, one thousand eight hundred and seventy ——. —— ——. [*Seal.*]

In the presence of ——.

**171.** *Assignment of mortgage—California form.*

Know all men by these presents, that ——, of the ——, county of ——, State of California, the party of the first part, in consideration of the sum of —— dollars, lawful money of the United States of America, to him in hand paid by ——, of ——, the party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part, a certain indenture of mortgage, bearing date the —— day of ——, one thousand eight hundred and seventy ——, made and executed by —— and ——, his wife, to the said party of the first part, and recorded in the office of the County Recorder of —— County, State of California, in book —— of mortgages, page ——, on the —— day of ——, A. D. 187——, at —— o'clock, in the —— noon; together with the promissory note [or bond] therein described, and the money due and to grow due thereon, with the interest. To have and to hold the same unto the said party of the second part, his executors, administrators, and assigns, for their use and benefit; subject only to the proviso in the said indenture of mortgage mentioned. And the said party of the first part does hereby make, constitute, and appoint the said party of the second part his true and lawful attorney, irrevocable in his name or otherwise, but at the proper costs and charges of the said party of the second part, to have, use, and

take all lawful ways and means for the recovery of the said money and interest; and in case of payment, to discharge the same as fully as the said party of the first part might or could do if these presents were not made.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the —— day of ——, in the year of our Lord one thousand eight hundred and seventy ——.

—— ——. [*Seal.*]

Signed, sealed, and delivered in the presence of —— ——.

178. *Assignment of mortgage—Illinois form.*

Know all men by these presents, that ——, party of the first part, in consideration of the sum of —— dollars, lawful money of the United States, to him in hand paid by ——, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred and set over, and by these presents does grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, a certain indenture of mortgage, bearing date the —— day of ——, one thousand eight hundred and seventy ——, made by ——, and recorded in the —— office of the county of ——, in liber —— of mortgages, at page ——; together with the bond [or note] therein described, and the money due and to grow due thereon, with the interest. To have and to hold the same unto the said party of the second part, his heirs and assigns, forever; subject only to the proviso in the said indenture of mortgage mentioned. And I do hereby make, constitute, and appoint the said party of the second part my true and lawful attorney, irrevocably, in my name or otherwise, but at his proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest; and in case of payment, to discharge the same as fully as I might or could do if these presents were not made. [*If a covenant as to the amount due on said mortgage is required, it may be inserted here.*]

In witness whereof, I have hereunto set my hand and seal, the —— day of ——, one thousand eight hundred and seventy ——.

—— ——. [*Seal.*]

Signed, sealed, and delivered in the presence of —— ——.

179. *Release of part of mortgaged premises.*

This indenture, made this —— day of ——, in the year one thousand eight hundred and seventy ——, between ——, party of the first part, and ——, party of the second part: Whereas, ——, by indenture of mortgage bearing date the —— day of ——, one thousand eight hundred and seventy ——, for the consideration

therein mentioned, and to secure the payment of the money therein specified, did convey certain lands and tenements, of which the lands hereinafter described are part, unto ——, party hereto of the first part, which said mortgage was recorded in the office of the clerk [or recorder] of the county of ——, on the —— day of ——, 187——, in book —— of mortgages, at page ——. And whereas, the said party of the first part, at the request of the said party of the second part, has agreed to give up and surrender the lands hereinafter described unto the said party of the second part, and to hold and retain the residue of the said mortgaged lands as security for the money remaining due on the said mortgage, now this indenture Witnesseth: That the said party of the first part, in pursuance of said agreement, and in consideration of one dollar to him duly paid at the time of the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, released, quitclaimed, and set over, and by these presents doth grant, release, quitclaim, and set over unto the said party of the second part, all that part of the said mortgaged land bounded and described as follows: [*here insert description of released premises*] together with the hereditaments and appurtenances thereunto belonging; and all the right, title, and interest of the said party of the first part, of, in, and to the same, to the intent that the lands hereby conveyed may be discharged from the said mortgage, and that the rest of the lands in the said mortgage specified may remain to the said party of the first part as heretofore. To have and to hold the land and premises hereby released and conveyed, to the said party of the second part, his heirs and assigns, to his and their only proper use, benefit, and behoof, forever, free, clear, and discharged from all lien and claim, under and by the virtue of the indenture of mortgage aforesaid.

In witness whereof, the party of the first part hath hereunto set his hand and seal, the day and year above written.

—— ——. [*Seal.*]

Sealed and delivered in the
presence of —— ——.

**180.** *Satisfaction of mortgage, New York form.*

STATE OF NEW YORK, }
County of New York, } ss.

I, ——, of the city, county, and State of New York, do hereby certify that a certain indenture of mortgage, bearing date the —— day of ——, in the year one thousand eight hundred and seventy ——, made and executed by —— and ——, his wife, to me, to secure the payment of —— dollars and interest, and recorded in the office of the register of the county of New York, in liber —— of mortgages, page ——, on the —— day of ——, in the year one thousand eight hundred and seventy ——, at —— o'clock in the

——noon, is paid, and I do hereby consent that the same be discharged of record. —— ——.

Dated the —— day of ——, 187——

Signed and delivered in the
presence of —— ——.

[An acknowledgment should be added. This form may be used for the satisfaction of a chattel mortgage, by using the word "filed," instead of "recorded," and giving the date of filing.]

**181.** *Satisfaction of mortgage, California form.*

Know all men by these presents, that I, ——, do hereby certify and declare that a certain mortgage, bearing date the —— day of ——, 187——, made and executed by ——, the party of the first part therein, to ——, the party of the second part therein, and ——, recorded in the office of the county recorder of the ——, county of ——, in book —— of mortgages, on page ——, on the —— day of ——, 187——, together with the debt thereby secured, is fully paid, satisfied, and discharged.

In witness whereof, I have hereunto set my hand and seal, the —— day of ——, one thousand eight hundred and seventy ——.

—— ——. [*Seal.*]
—— ——. [*Seal.*]

Signed, sealed, and delivered in the
presence of —— ——.
—— ——.

[Add acknowledgment.]

**182.** *Satisfaction of mortgage, general form.*

Know all men by these presents, that I, ——, of the ——, of ——, and State of ——, do hereby certify that a certain indenture of mortgage, bearing date the —— day of ——, one thousand eight hundred and seventy——, made and executed by——, party of the first part, to ——, of the second part, and recorded in the office of the clerk [or recorder] for the county of ——, in liber —— of mortgages, page ——, on the —— day of ——, one thousand eight hundred and seventy ——, is fully paid, satisfied, and discharged.

In witness whereof, I have hereunto set my hand and seal, the —— day of ——, one thousand eight hundred and seventy ——.

—— ——. [*Seal.*]

Signed, sealed, and delivered in the
presence of —— ——.

[Add proper acknowledgment.]

**183.** *Chattel mortgage with danger clause.*

To all to whom these presents shall come: Know ye that I, ——, of the ——, county of ——, and State of ——, party of the first part, for the securing the payment of the money hereinafter mentioned, and in consideration of the sum of one dollar to me duly paid by ——, of the same place, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant, bargain, and sell unto the said party of the second part, [*here describe the goods*] now in the premises No. ——, —— Street, in the city of ——, to have and to hold, all and singular the goods and chattels above bargained and sold, or intended so to be, unto the said party of the second part, his executors, administrators, and assigns forever. And I, the said party of the first part, for myself, my heirs, executors, and administrators, all and singular the said goods and chattels above bargained and sold unto the said party of the second part, his heirs, executors, administrators, and assigns, against me, the said party of the first part, and against all and every person or persons whomsoever, shall and will warrant, and forever defend. Upon condition that if I, the said party of the first part, shall and do well and truly pay unto the said party of the second part, his executors, administrators, or assigns, the sum of one thousand dollars, with interest thereon from ——, ——, on or before the —— day of ——, 187——, [or on demand] then these presents shall be void. And I, the said party of the first part, for myself, my executors, administrators, and assigns, do covenant and agree to and with the said party of the second part, his executors, administrators, and assigns, that in case default shall be made in the payment of the said sum above mentioned, or should said goods be sold or removed, or levied upon by execution or attachment, that it shall and may be lawful for, and I, the said party of the first part, do hereby authorize and empower the said party of the second part, his executors, administrators, and assigns, with the aid and assistance of any person or persons, to enter my dwelling-house, store, and other premises, and such other place or places as the said goods or chattels are or may be placed, and take and carry away the said goods or chattels, and to sell and dispose of the same for the best price they can obtain; and out of the money arising therefrom to retain and pay the said sum above mentioned, and all charges touching the same; rendering the overplus [if any] unto me or to my executors, administrators, or assigns. And until default be made in the payment of the said sum of money, or said goods be sold, removed, or levied upon, I am to remain and continue in the quiet and peaceable possession of the said goods and chattels, and the full and free enjoyment of the same.

In witness whereof, I, the said party of the first part, have hereunto set my hand and seal the —— day of ——, one thousand eight hundred and seventy ——. —— ——. [*Seal.*]

Signed, sealed, and delivered in the
presence of —— ——.

[This form is adapted for and in use generally in the Eastern States.]

184. *Chattel mortgage, California form.*

This mortgage, made the —— day of ——, in the year A. D. eighteen hundred and seventy ——, by ——, of the ——, county of ——, State of ——, by occupation ——, mortgagor to ——, of the ——, county of ——, State of ——, by occupation ——, mortgagee ——, Witnesseth: That said mortgagor mortgages to the said mortgagee all that certain personal property situated and described as follows, to wit: [*here give a schedule or statement of the property*] as security for the payment to him, the said mortgagee, of —— dollars, —— of the United States of America, on —— day of ——, in the year of our Lord eighteen hundred and seventy ——, with interest thereon at the rate of —— per cent. per ——, according to the terms and conditions of a certain promissory note, of even date herewith, and in the words and figures following, to wit: ——.

—— ——. [*Seal.*]
—— ——. [*Seal.*]

Signed and executed in the presence of —— ——.
—— ——.

STATE OF CALIFORNIA, } ss.
—— County of ——, }

——, the mortgagor in the foregoing mortgage named, and ——, the mortgagee in said mortgage named, being duly sworn, each for himself, doth depose and say: That the aforesaid mortgage is made in good faith, and without any design to hinder, delay, or defraud creditor or creditors. —— ——.

—— ——.

Subscribed and sworn to this —— day of ——, A. D. 187——, at the ——, county of ——, before me, —— ——.

[By the Civil Code of California, Sec. 2957, a mortgage of personal property is void as against creditors of the mortgagor, and subsequent purchasers and incumbrancers of the property, in good faith and for value, unless: 1. It is accompanied by the affidavit of all the parties thereto, that it is made in good faith, and without any design to hinder, delay, or defraud creditors; 2. Unless it is acknowledged or proved, certified and recorded in like manner as grants of real property. By Sec. 2955, Civil Code, chattel mortgages may be made upon: First, Locomotives, engines, and other rolling stock of a railroad; Second, Steamboat machinery, the machinery used by machinists, foundry-men, and mechanics; Third, Steam-engines and boilers; Fourth, Mining machinery; Fifth, Printing-presses and material; Sixth, Professional libraries; Seventh, Instruments of a surgeon, physician, or dentist; Eighth, Upholstery and furniture used in hotels, lodging or boarding-houses, when mortgaged to secure the purchase-money of the arti-

cles mortgaged; Ninth, Growing crops; Tenth, Vessels of more than five tons burden; Eleventh, Instruments, negatives, furniture, and fixtures of a photograph gallery.]

**185.** *Chattel mortgage, Ohio form.*

Know all men by these presents, that ——, of ——, in consideration of one dollar, to him in hand paid, by ——, of the ——, the receipt of which is hereby acknowledged, doth hereby bargain, sell, and convey to the said ——, and his assigns, the goods and chattels described in the schedule hereto annexed; to have and to hold the same, to the use of the said ——, his executors, administrators, and assigns. And said mortgagor covenants that he will insure the said property for not less than —— dollars, and keep the same insured during the continuance of this mortgage, and if he neglect or fail so to do, then the mortgagee may insure the same at the expense of the mortgagor; and in case of loss, if any, payment shall be made to the mortgagee, for the use and purpose herein mentioned. Provided, nevertheless, that if the said —— shall pay unto the said —— the sum of —— dollars, on the —— day of ——, 187——, [or pay the amount of a certain note, executed by the said ——, for ——; or perform any other condition] then this conveyance shall be void; otherwise, to be and remain in full force. The said mortgagor hereby covenants, that on default of payment, or any sale, or attempt to sell, said goods or chattels, or any part of them, or to remove them, or any part of them, from the county, or from their location, or upon any seizure of them, or any part of them, by any process of law, or upon any failure to comply with the said provisions as to insurance, then the said mortgagee or his assigns may take them into his possession.

In witness whereof, the said —— has hereunto set his hand and seal, this —— day of ——, in the year of our Lord one thousand eight hundred and seventy ——. —— ——. [*Seal.*]

Signed, sealed, and acknowledged in
presence of us: —— ——.
—— ——.

[By the laws of Ohio, Act April 11th, 1863, a statement of the debt or claim for which the mortgage is given to secure, must be made and sworn to, and appended, as follows:]

STATE OF OHIO, }
County of ——, } ss.

——, mortgagee, named in this mortgage, being duly sworn, makes oath and says: That his claim against ——, the mortgagor, of which a true statement is hereunto annexed, amounts to the sum of ——, and that said claim is just and unpaid. —— ——.

Sworn to and subscribed before me, a —— in and for said county, this —— day of ——, 187——. —— ——

**186.** *Chattel mortgage, Illinois form.*

Know all men by these presents, that I, ——, of the town of ——, in the county of —— and State of Illinois, in consideration of —— dollars, to me paid by ——, of the county of —— and State of —— the receipt whereof is hereby acknowledged, do hereby grant, bargain, and sell, unto the said ——, and to his heirs and assigns forever, the following goods and chattels, to wit: [*here give a schedule or statement*]. To have and to hold, all and singular, the said goods and chattels, unto the said mortgagee herein, and his heirs and assigns, to their sole use and behoof, forever. And the mortgagor herein, for himself and for his heirs, executors, and administrators, does hereby covenant, to and with the said mortgagee, and his heirs and assigns, that said mortgagor is lawfully possessed of the said goods and chattels, as of his own property; that the same are free from all incumbrances, and that he will warrant and defend the same to ——, the said mortgagee, and to his heirs and assigns, against the lawful claims and demands of all persons.

Provided, nevertheless, that if the said mortgagor shall pay unto the said mortgagee the sum of —— dollars, on the —— day ——, 187——, [or perform any other condition] then this mortgage to be void, otherwise to remain in full force and effect.

And provided further, that until default be made by the said mortgagor, in the performance of the condition aforesaid, it shall and may be lawful for him to retain the possession of the said goods and chattels, and to use and enjoy the same; but if the same, or any part thereof, shall be attached or claimed by any other person or persons, at any time before payment, or the said mortgagor, or any person or persons whatever, upon any pretense, shall attempt to carry off, conceal, make way with, sell, or in any manner dispose of the same, or any part thereof, without the authority and permission of the said mortgagee, or his heirs, executors, administrators, or assigns, in writing expressed, then it shall and may be lawful for the said mortgagee, with or without assistance, or his agent or attorney, or heirs, executors, or administrators, to take possession of said goods and chattels, by entering upon any premises wherever the same may be, whether in this county or State, or elsewhere, to and for the use of said mortgagee, his heirs or assigns. And if the moneys hereby secured, or the matters to be done or performed, as above specified, are not duly paid, done, or performed at the time and according to the conditions above set forth, then the said mortgagee, or his attorney or agent, or his heirs, executors, administrators, or assigns, may by virtue hereof, and without any suit or process, immediately enter and take possession of said goods and chattels, and sell and dispose of the same at public or private sale; and after satisfying the amount due and all expenses, the surplus, if any remain, shall be paid over to said mortgagor, or his heirs or assigns. The exhibition of this mortgage shall be sufficient proof that any person claiming to act for the mortgagee is duly made, constituted, and appointed agent and attorney to do whatever is above authorized.

In witness whereof, the said mortgagor has hereunto set his hand and seal, this —— day of ——, in the year of our Lord one thousand eight hundred and ——. —— ——. [*Seal.*]
—— ——. [*Seal.*]

Signed, sealed, and delivered in presence of —— ——.

187. *Lease, general form.*

This indenture, made the —— day of ——, in the year of our Lord one thousand eight hundred and seventy ——, between ——, of the ——, party of the first part, and ——, of the ——, party of the second part, Witnesseth: That the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter mentioned and obtained on the part of the said party of the second part, his executors, administrators, and assigns, to be paid, observed, and performed, hath demised and leased, and by these presents doth demise and lease, unto the said party of the second part, his executors, administrators, and assigns, ——, [*here give description of the leased property*] together with all and singular the benefits, liberties, and privileges to the said premises belonging. To have and to hold the said demised premises, with the appurtenances, unto the said party of the second part, his executors, administrators, and assigns, for and during and until the full end and term of ——, next ensuing the —— day of ——, fully to be complete and ended; yielding and paying therefor during the continuance of the lease unto the said party of the first part, his heirs and assigns. [*Here state terms of rental, time of payments, etc.*] And the said party of the second part, for his executors, administrators, and assigns, doth covenant well and truly to pay, or cause to be paid, unto the said party of the first part, his heirs and assigns, at the days and times above mentioned, the rent above reserved. And at the end of the said term shall and will peaceably and quietly leave, surrender, and yield up the said premises unto the said party of the first part, his heirs and assigns; provided always, and these presents are upon the express condition, that if it shall so happen that the rent above reserved, or any part thereof, be behind or unpaid at the times or on the days above mentioned for the payment thereof, or in case of the non-performance of any of the covenants made by the said party of the second part, at any of the times mentioned for the performance thereof, then and from thenceforth it shall and may be lawful for the said party of the first part, his heirs and assigns, into the said demised premises, ——, or any part, in the name of the whole, to re-enter, and the same to have again, retain, re-possess, and enjoy, and the said party of the second part, his heirs, executors, administrators, or assigns, and all others, tenants or occupiers of the said premises hereby demised, or any part thereof, thereout, or therefrom, utterly to expel, put out, and remove; and from and after such re-entry made, this lease, and every part thereof, shall cease, and be absolutely void, as it respects the covenants to be performed by the

said party of the first part. And the said party of the first part, for his heirs and assigns, doth hereby covenant and agree to and with the said party of the second part, his heirs, executors, administrators, or assigns, paying the rent above reserved in manner aforesaid, and observing, keeping, and performing all and singular the covenants and agreements hereinbefore mentioned on his and their parts to be kept and performed, shall and may peaceably and quietly have, hold, occupy, possess, and enjoy the said demised premises, with the appurtenances, for and during the said term, without any lawful let, quit, hindrance, or molestation to the said party of the first part, his heirs and assigns, or any other person or persons claiming or to claim by, from, or under him or them, or any other person or persons having or lawfully claiming any right in the said premises.

In witness whereof, the parties hereunto have interchangeably set their hands and seals, the day and year first above written.

—— ——. [*Seal.*]
—— ——. [*Seal.*]

Signed, sealed, and delivered in
presence of —— ——.

**188.** *Form of bill of sale.*

Know all men by these presents, that ——, of the ——, State of California, the party of the first part, for and in consideration of the sum of —— dollars, —— of the United States of America, to him in hand paid by ——, the party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, and convey unto the said party of the second part, his executors, administrators, and assigns, ——, to have and to hold the same to the said party of the second part, his executors, administrators, and assigns forever. And he does, for his heirs, executors, and administrators, covenant and agree to and with the said party of the second part, his executors, administrators, and assigns, to warrant and defend the sale of said property, goods, and chattels hereby made unto the said party of the second part, his executors, administrators, and assigns, against all and every person and persons whomsoever.

In witness whereof, —— has hereunto set his hand and seal, the —— day of ——, in the year of our Lord one thousand eight hundred and seventy ——. —— ——. [*Seal.*]

Sealed and delivered in the presence
of —— ——.

**189.** *Form of bill of sale of personal property, Illinois form.*

Know all men by these presents, that ——, of ——, State of Illinois, in consideration of ——, paid by ——, the receipt whereof is hereby acknowledged, does hereby bargain, sell, and deliver unto the said

——, to have and to hold the said goods and chattels unto the said ——, his executors, administrators, and assigns, to —— own proper use and benefit forever. And ——, the said ——, does avouch himself to be the true and lawful owner of said goods and chattels; that he has full power, good right, and lawful authority to dispose of said goods and chattels, in manner as aforesaid; and that he will, and his heirs, executors, and administrators shall, warrant and defend the said bargained premises —— unto the said ——, executors, administrators, and assigns, from and against the lawful claims and demands of all persons.

In witness whereof, ——, the said ——, hath hereto set his hand and seal this —— day of ——, in the year of our Lord eighteen hundred and ——. —— ——. [*Seal.*]

Executed and delivered in presence of —— —— ——. [*Seal.*]

**190.** *Form of special power of attorney.*

Know all men by these presents, that —— have made, constituted, and appointed, and by these presents do make, constitute, and appoint, ——, my true and lawful attorney, for myself and in my name, place, and stead; giving and granting unto ——, my said attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue of these presents.

In witness whereof, I have hereunto set my hand and seal, the —— day of ——, one thousand eight hundred and seventy ——.

Signed, sealed, and delivered in the presence of —— —— ——. [*Seal.*] —— ——. [*Seal.*]

**191.** *Form of general power of attorney.*

Know all men by these presents, that I have made, constituted, and appointed, and by these presents do make, constitute, and appoint, ——, true and lawful attorney, for me and in my name, place, and stead, and for my use and benefit, —— to ask, demand, sue for, recover, collect, and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities, and demands whatsoever, as are now or shall hereafter become due, owing, payable, or belonging to me, and have, use, and take all lawful ways and means, in my name or otherwise, for the recovery thereof, by attachments, arrests, distress, or otherwise, and to compromise and agree for the same, and acquittances or other sufficient discharges for the same, for me and in my name, to make, seal, and deliver; to bargain, contract, agree for, purchase, receive, and take lands, tenements, hereditaments, and accept the seizin and

possession of all lands, and all deeds and other assurances, in the law therefor, and to lease, let, demise, bargain, sell, remise, release, convey, mortgage, and hypothecate lands, tenements, and hereditaments upon such terms and conditions, and under such covenants, as —— shall think fit. Also, to bargain and agree for, buy, sell, mortgage, hypothecate, and in any and every way and manner deal in and with goods, wares, and merchandise, choses in action, and other property in possession or in action, and to make, do, and transact all and every kind of business of what nature and kind soever, and also for me and in my name, and as my act and deed, to sign, seal, execute, deliver, and acknowledge such deeds, leases and assignment of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, notes, receipts, evidences of debt, releases and satisfaction of mortgage, judgment and other debts, and such other instruments in writing, of whatever kind and nature, as may be necessary or proper in the premises. Giving and granting unto ——, said attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, I hereby ratifying and confirming all that ——, said attorney ——, shall lawfully do or cause to be done by virtue of these presents.

In witness whereof, I have hereunto set my hand and seal, the —— day of ——, one thousand eight hundred and seventy ——.

Signed, sealed, and delivered in the presence of —— ——. —— ——. [*Seal.*]

**192.** *Agreement, California form.*

This agreement, made the —— day of ——, in the year of our Lord one thousand eight hundred and seventy ——, between ——, of ——, the party of the first part, and ——, of ——, the party of the second part, Witnesseth: That the said party of the first part, in consideration of the covenants, promises, and agreements on the part of the said party of the second part, hereinafter contained, hereby covenants, promises, and agrees to and with the said party of the second part, that the said party of the first part will ——. And the said party of the second part, in consideration of the said covenants, promises, and agreements on the part of the said party of the first part, hereinbefore contained, covenants, promises, and agrees to and with the said party of the first part, that the said party of the second part will ——. And for the true and faithful performance of all and every of the said covenants, promises, and agreements, the said parties to these presents bind themselves, each unto the other, in the penal sum of —— dollars, —— of the United States of America, as fixed, settled, and liquidated damages, to be paid by the failing party to the other, his heirs or assigns.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

—— ——. [*Seal.*]
—— ——. [*Seal.*]

Signed, sealed, and delivered in
the presence of —— ——.
—— ——.

**193.** *Bond for a deed, California form.*

Know all men by these presents, that —— are held and firmly bound unto ——, in the sum of —— dollars, —— of the United States of America, to be paid to the said ——, executors, administrators, or assigns; for which payment well and truly to be made —— bind —— heirs, executors, and administrators, —— firmly by these presents. Sealed with —— seal, and dated the —— day of ——, A. D. one thousand eight hundred and seventy ——. The condition of the above obligation is such, that if the above bounden obligor shall, on ——, the —— day of ——, A. D. one thousand eight hundred and seventy ——, make, execute, and deliver unto the said ——, (provided that the said —— shall, on or before that day, have paid the said obligor the sum of —— dollars, —— the price by said —— agreed to be paid therefor) a good and sufficient conveyance —— of all that certain lot, piece, or parcel of land situate, lying, and being in the ——, county of —— and State of ——, and bounded and particularly described as follows, to wit: ——. Then this obligation to be void, otherwise to remain in full force and virtue.

—— ——. [*Seal.*]
—— ——. [*Seal.*]

Signed, sealed, and delivered in the
presence of —— ——.
—— ——.

**194.** *Bond for a deed, Illinois form.*

Know all men by these presents, that ——, of ——, in the county of —— and State of Illinois, is held and firmly bound unto ——, of ——, in the county of —— and State of ——, in the penal sum of —— dollars, for the payment of which sum, well and truly to be made to him, his heirs, executors, and administrators, I bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal and dated this —— day of ——, 18——.

The condition of the above obligation is such, that whereas, the said —— this day has given the said —— promissory note of even date herewith, ——. Now if, on payment of the said note being made on or before the time —— shall —— become due, and all taxes on the land hereinafter described having been paid by the said ——, and no right of pre-emption having been established or claimed on the said land, or any part thereof, the said ——, or

his legal representatives, shall, whenever thereunto afterward requested, execute and deliver to the said ——, or his legal representatives, a good and sufficient deed, conveying to —— the ——, free and clear of all incumbrance ——, then this obligation to be null and void, otherwise of full force and effect, it being distinctly understood and agreed, by and between the parties hereto, that the time of payment herein above fixed —— material and of the essence of this contract, and that, in case of failure therein, the intervention of equity is forever barred. —— ——. [*Seal.*]

Signed, sealed, and delivered in presence of —— ——. —— ——. [*Seal.*]

**195.** *Agreement for sale of real estate, California form.*

This agreement, made and entered into the —— day of ——, in the year of our Lord one thousand eight hundred and seventy——, between ——, party of the first part and ——, of ——, the party of the second part, Witnesseth: That the said party of the first part, in consideration of the covenants and agreements on the part of the said party of the second part, hereinafter contained, agrees to sell and convey unto the said party of the second part, and said second party agrees to buy all —— certain —— or parcel of land situate in the ——, county of —— and State of ——, and bounded and particularly described as follows, to wit: —— for the sum of —— dollars, —— of the United States, and the said party of the second part, in consideration of the premises, agrees to pay —— to the said party of the first part, the said sum of —— dollars, —— as follows, to wit: —— and the said party of the second part agrees to pay all State, ——, and county taxes, or assessments of whatsoever nature, which are or may become due on the premises above described.

In the event of a failure to comply with the terms hereof, by the said party of the second part, the said party of the first part shall be released from all obligation in law or equity to convey said property, and said party of the second part shall forfeit all right thereto. And the said party of the first part, on receiving such payment, at the time and in the manner above mentioned, agrees to execute and to deliver to the said party of the second part, or to his assigns, a good and sufficient deed ——. And it is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, and assigns of the respective parties. ——

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

—— ——. [*Seal.*]

Signed, sealed, and delivered in presence of —— ——. —— ——. [*Seal.*]

**196.** *Form of contract for the sale of real estate, Ohio form.*

This agreement, made and entered into at ——, this —— day of ——, A. D. one thousand eight hundred and ——, by and between ——, of ——, County and State of Ohio, and ——, of ——, County and State of Ohio, Witnesseth: That the said —— hath sold, and doth agree to convey in fee-simple unto said ——, his heirs and assigns forever, by a good and sufficient deed of general warranty, ——, on or before the —— day of ——, A. D. 18——, (upon the punctual payment by said —— of the consideration-money hereinafter mentioned) the following premises, situate in ——, and bounded and described as follows: ——. Together with all the privileges and appurtenances to the same belonging, and all the rents, issues, and profits thereof. And the said ——, for ——, and for —— heirs, executors, administrators, and assigns, do covenant and agree to and with ——, heirs and assigns, that he will pay to the said ——, heirs or assigns, the sum of ——, the consideration-money for said premises in the manner following: ——. All assessments and taxes, that now are or may hereafter be levied or assessed on said premises, are to be paid in the manner following: ——. The said —— hereby agrees that the said —— shall enter into possession of said premises on the —— day of ——, A. D. 18——, to use and improve as his own, in a good and husbandlike manner.

It is understood and agreed, by and between the parties to this agreement, that if the said —— fail to pay the said consideration-money, or the assessments or taxes as herein stipulated, —— then this agreement is to be void as it regards the said ——, at —— option.

In testimony whereof, the said —— have hereunto set their hands and seals, the day and year first above written.

Signed and sealed in presence of us: —— ——. —— ——. —— ——. —— ——.

—— ——. [*Seal.*]
—— ——. [*Seal.*]
—— ——. [*Seal.*]
—— ——. [*Seal.*]

**197.** *Articles of agreement for warranty deed, Illinois form.*

Articles of agreement, made this —— day of ——, in the year of our Lord one thousand eight hundred and ——, between ——, party of the first part, and ——, party of the second part, Witnesseth: That said party of the first part hereby covenants and agrees, that if the party of the second part shall first make the payments and perform the covenants hereinafter mentioned on —— part to be made and performed, the said party of the first part will convey and assure to the party of the second part, in fee-simple, clear of all incumbrances whatever, by a good and sufficient warranty deed, the following lots, pieces, or parcels of ground, viz: ——. And the said party of the second part hereby covenants and agrees to pay to said party of the first part the sum of —— dollars,

in the manner following: —— dollars, cash in hand paid, the receipt whereof is hereby acknowledged, and the balance ——, with interest at the rate of —— per centum per annum, payable —— annually, on the whole sum remaining from time to time unpaid, and to pay all taxes, assessments, or impositions that may be legally levied or imposed upon said land, subsequent to the year ——, and in case of the failure of the said party of the second part to make either of the payments, or perform any of the covenants on his part hereby made and entered into, this contract shall, at the option of the party of the first part, be forfeited and determined, and the party of the second part shall forfeit all payments made by him on this contract, and such payments shall be retained by the said party of the first part in full satisfaction and in liquidation of all damages by him sustained, and he shall have the right to reenter and take possession of the premises aforesaid, ——.

It is mutually agreed that all the covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators, and assigns of the respective parties.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered in presence of —— ——.

—— ——. [*Seal.*]
—— ——. [*Seal.*]
—— ——. [*Seal.*]

**198.** *Farm land contract, Michigan form.*

This contract, made the —— day of ——, in the year of our Lord one thousand eight hundred and ——, between ——, party of the first part, and ——, party of the second part, Witnesseth as follows:

1st. The said party of the first part, in consideration of the sum of ——, to be paid to the party of the first part, and of the covenants to be performed by the said party of the second part, as hereinafter expressed, hereby agrees to sell to the said party of the second part, all th—— certain tract of land situate in the —— of ——, in the State of Michigan, known and designated as ——, with the privileges and appurtenances thereunto belonging.

2d. The said party of the second part, in consideration of the covenants herein contained on behalf of the said party of the first part, agrees to purchase of the said party of the first part the above described land, and to pay for the same to the said party of the first part, or his legal representatives, the sum of —— dollars and —— cents, lawful money of the United States, in manner following, that is to say: —— with interest, to be computed from the date of these presents, at —— and after the rate of —— per centum per annum, on the whole sum that shall be from time to time unpaid, and to be paid annually; both principal and interest to be paid ——; and also, that he will, so long as any part of the principal or interest of the said consideration-money remains unpaid, well and faithfully, in due season, in each and every year, pay, or cause

to be paid, all taxes and assessments, ordinary and extraordinary, that may, for any purpose whatever, be levied or assessed on said premises, or on this contract, and that he will not commit or suffer any other person to commit any waste or damage to the said lands or the appurtenances, except for fire-wood, or otherwise for his own use, or while clearing off the lands for cultivation in the ordinary manner.

3d. The said party of the first part further covenants and agrees with the said party of the second part, that upon the faithful performance, by the said party of the second part, of the covenants and agreements by him to be performed, and upon the payment of the several sums of money above mentioned, and the interest thereon, at the time and in the manner and at the place above mentioned, to the said party of the first part, that thereupon the said party of the first part will well and faithfully execute and deliver a good and sufficient deed or deeds, and thereby convey to the said party of the second part, his heirs and assigns, a good and unincumbered title in fee-simple to the above described premises, with their appurtenances.

4th. It is further mutually covenanted and agreed, by and between the parties hereto, that the said party of the second part may immediately enter on the said land, and remain thereon and cultivate the same as long as he shall fulfill and perform all the agreements hereinbefore mentioned on his part to be fulfilled and performed, and no longer; and that if he shall, at any time hereafter, violate or neglect to fulfill any of said agreements, he shall forfeit all right or claim under this contract, and be liable to the said party of the first part for damages, and shall also be liable to be removed from the said land in the same manner as is provided by law for the removal of a tenant that holds over after the expiration of the time specified in his lease. And it shall be lawful for the said party of the first part, at any time after the violation or non-fulfillment of any of the said agreements on the part of the said party of the second part, to sell and convey the said land, or any part thereof, to any other person whomsoever; and the said party of the first part shall not be liable in any way, nor to any person, to refund any part of the money which he may have received on this contract, nor for any damages on account of such sale. And it is hereby expressly understood and declared, that time is and shall be deemed and taken as of the very essence of this contract, and that unless the same shall, in all respects, be complied with by the said party of the second part, at the respective times, and in the manner above limited and declared, that the said party of the second part shall lose and be debarred from all rights, remedies, or actions, either in law or equity, upon or under this contract.

5th. This contract is hereby declared to be binding on the respective representatives of the parties hereto.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Sealed and delivered in presence of —— ——. —— —— —— —— —— ——.

**199.** *Building contract, Ohio form.*

This agreement, between ——, of ——, county of —— and State of Ohio, party of the first part, (designated below as the employer) and ——, of ——, party of the second part, (designated below as the contractor) Witnesseth:

1. That the contractor agrees to furnish all the material, and do all the work of whatever kind, required by, or reasonably to be inferred from, the plans and specifications, (said plans and specifications being hereby incorporated with and made a part of this contract) for the full and entire completion of ——, (designated herein as the improvement) for the sum of —— dollars.

2. The said contractor further agrees that all materials called for by the said plans and specifications are to be of the best qualities of their respective kinds, and that all work shall be done in the most thorough and workmanlike manner, and that he will not vary in any manner from the said plans and specifications without the written order of the employer.

3. The said contractor further agrees that he will entirely complete the said improvement by the —— day of ——, 18——; and it is expressly agreed between the parties that the damages by each day's delay, beyond that date, are fairly to be estimated at ——, and are therefore, to avoid dispute, hereby fixed by agreement at that sum per day, and the amount of damages, estimated upon the basis so fixed, is to be deducted from the contract price as liquidated damages, and not by way of penalty.

4. The said employer reserves the right to order in writing any alteration he may deem proper, from the said plans and specifications. It is agreed between the parties that upon the delivery of any such order to the contractor, or person in charge of said work, it shall be the duty of either party, claiming any allowance in consequence of such alteration, to notify the other party in writing, before the alteration is actually commenced, and if the parties are able to agree upon the amount to be added or deducted from the contract price, in consequence of such alteration, it shall be reduced to writing and signed by them. If they cannot so agree, then the said amount shall be fixed by ——, or in case he cannot act, then by some one to be appointed by ——, who shall make his decision in writing, and furnish both parties with a copy, and such decision shall be final.

5. It is expressly agreed by the parties that no such alteration shall in any way vitiate or annul this contract; and, further, that in case of an alteration causing a deduction in work or materials, the contractor is not to claim or bring suit for any damages by way

of loss of profits, on account of not being allowed to do this work, nor is the referee to admit this element into his decisions.

6. The said contractor expressly covenants and agrees that he will not, in any event, claim or bring suit for any greater sum, for the entire completion of the said improvement, than the contract price, with such additions or deductions as may be fixed by the written contracts and decisions above provided for.

7. The said parties expressly agree that no acts of any kind whatever, of either party, or both parties, shall be construed to be a waiver of the provisions of this contract, which require a written order for, or the fixing by written agreement or decision of a price for, any alteration from the said plans and specifications; and further expressly agree that the making of any alteration, without a written agreement fixing the allowance to be made therefor, shall be taken to be an express agreement that the aggregate price shall not be changed at all, in consequence of such alteration.

8. The said employer reserves the right to appoint a superintendent, or inspector, of this improvement, and it is expressly stipulated and agreed that no claim shall be made or suit brought for any sum due, or claimed to be due, for said improvement, unless upon certificate of the said superintendent or inspector, that the improvement has been made in strict accordance with the contract, and plans, and specifications, or such alterations as may have been made therein in accordance with the stipulations of this contract.

9. Said parties further stipulate that, upon the failure by the contractor to proceed with said improvement to the satisfaction of the employer, so as to secure the completion of the improvement within the stipulated time, or upon his failure to comply with the requirements of this contract, it shall be lawful for the employer, after giving ten days' written notice of his intention so to do, to be served upon the contractor, (or either of them, if there be more than one) or left at his or their last usual place of abode, either, *first*, to complete said improvement, by contract or day's work, at the expense of the said party of the second part, and to recover from said contractor and his sureties the additional expense thereby incurred, if any, over the amount due according to this contract; or, *second*, at the option of the employer, to entirely avoid the contract, and bring suit at once against said contractor and his sureties for the damages occasioned thereby, in which latter case, all work done, and materials on the ground, are to become the property of the employer, without any further payment therefor.

10. The said employer agrees, upon the production of the certificate of the superintendent or inspector, to pay for the full and entire completion of the said improvement in accordance with the plans and specifications, the contract price above stipulated, with such additions or deductions as may be fixed by written agreement or decision as above stipulated, or may be due as liquidated damages for delay, as above agreed, and no more. The payment to be made in the following manner:——

In witness whereof, the said parties have hereunto set their hands this —— day of ——, 187——

——.
——.

**200.** *Builder's contract, California form.*

Articles of agreement, made this —— day of ——, one thousand eight hundred and seventy ——, between ——, of ——, State of California, of the first part, and ——, of ——, of the second part:

1st. The said party of the second part does hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said party of the first part, his executors, administrators, and assigns, that he, the said party of the second part, his executors and administrators, shall and will, for the consideration hereinafter mentioned, on or before the ——, well and —— erect and finish the building ——, conformable to the drawings and specifications made by ——, and signed by the parties and hereunto annexed, within the time aforesaid, in a good, workmanlike, and substantial manner, to the satisfaction and under the direction of the said ——, to be testified by a writing or certificate under the hand of the said ——, and also shall and will find and provide such good, proper, and sufficient materials, of all kinds whatsoever, as shall be proper and sufficient for completing and finishing all the ——, and other works of said building mentioned in the —— specification, for the sum of —— dollars. And the said party of the first part does hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said party of the second part, his executors and administrators, that he, the said party of the first part, his executors or administrators, shall and will, in consideration of the covenants and agreements being strictly performed and kept by the said party of the second part, as specified, well and truly pay, or cause to be paid, unto the party of the second part, his executors, administrators, or assigns, the said sum of —— dollars, —— of the United States of America. In the manner following: —— Provided, that in each of the said cases a certificate be obtained and signed by the said ——. And it is hereby further agreed by and between the said parties:

First.—The specifications and drawings are intended to co-operate, so that any works exhibited in the drawings, and not mentioned in the specifications, or *vice versa*, are to be executed the same as if it were mentioned in the specifications, and set forth in the drawing, to the true meaning and intention of the said drawings and specifications.

Second.—The contractor, at his own proper costs and charges, is to provide all manner of materials and labor, scaffolding, implements, moulds, models, and cartage of every description, for the due performance of the several erections.

Third.—Should the owner, at any time during the progress of said building, request any alterations, deviations, additions, or

omissions from the said contract, specifications, or plans, he shall be at liberty to do so, and the same shall in no way affect or make void the contract, but will be added to or deducted from the amount of the said contract price, as the case may be, by a fair and reasonable valuation.

FOURTH.—Should the contractor, at any time during the progress of said works, refuse or neglect to supply a sufficiency of materials or workmen, the owner shall have the power to provide materials and workmen, (after three days' notice, in writing, given) to finish the said works, and the expenses shall be deducted from the amount of the said contract price.

FIFTH.—Should any dispute arise respecting the true construction or meaning of the drawings or specifications, the same shall be decided by ——, and —— decision shall be final and conclusive; but should any dispute arise respecting the true value of the extra work or works omitted, the same shall be valued by two competent persons—one employed by the owner and the other by the contractor—and in case they cannot agree, these two shall have power to appoint an umpire, whose decision shall be binding on all parties.

SIXTH.—The owner shall not, in any manner, be answerable or accountable for any loss or damage that shall or may happen to the said works, or any part or parts thereof respectively, or for any of the materials or other things used and employed in finishing and completing the same (loss or damage by fire excepted).

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed and sealed in the presence of —— ————. [*Seal.*]
————. [*Seal.*]
————. [*Seal.*]

**201.** *Bond, Ohio form.*

Know all men by these presents, that —— held and firmly bound unto —— in the sum of —— dollars, to be paid to the said ——, executors, administrators, or assigns, for which payment, well and truly to be made, —— bind —— heirs, executors, and administrators, —— firmly by these presents.

Sealed with —— seal, dated the —— day of ——, one thousand eight hundred and ——.

The condition of the above obligation is such, that ——, then the above obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed, and acknowledged in the presence of us, —— ——. —— ——. —— ——.
—— ——.

**202.** *Assignment of judgment, New York form.*

Know all men by these presents, that whereas, I, ——, of the city of ——, in the State of New York, did, on the —— day of ——, 187——, recover a judgment in the —— Court of the State of New York, against —— for the sum of —— dollars; which said judgment was docketed in the office of the clerk of the county of New York on the —— day of ——, 187——. Now, therefore, I, the said ——, in consideration of the sum of —— dollars, to me paid, the receipt whereof is hereby acknowledged, have assigned, sold, transferred, and set over to ——, of the said city of ——, and do hereby assign, sell, transfer, and set over to the said ——, the said judgment, together with all sums of money thereon, and all benefits that may be obtained thereunder. And I do constitute the said —— my attorney, in my name or otherwise, but at his own costs and expense, to collect and enforce said judgment for his own benefit, and to give all proper and necessary receipts, releases, and acquittances therefor. And I do covenant to and with the said ——, his executors, administrators, and assigns, that there is now due and owing on said judgment the sum of —— dollars, with interest thereon from ——, and that I have not received nor will receive any part of said sum of —— dollars and interest, and have not done and will not do any act or thing to delay or hinder the collection and enforcement of said judgment.

In witness whereof, I have hereunto set my hand and seal, this —— day of ——, one thousand eight hundred and seventy ——.

Sealed and delivered in presence —— ——. [*Seal.*]
of —— ——.

**203.** *Assignment of judgment, California form.*

Know all men by these presents, that ——, of the State of California, the party of the first part, in consideration of the sum of —— dollars, —— of the United States of America, to me in hand paid by ——, the party of the second part, the receipt of which is hereby acknowledged, has sold, assigned, transferred, and set over, and by these presents doth sell, assign, transfer, and set over, unto the said party of the second part, and his assigns, a certain judgment, recovered by the said party of the first part, on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, in the —— Court of the ——, State of ——, against ——, for the sum of —— dollars ——, and —— dollars costs. And all sums of money that may be had or obtained by means of said judgment, or on any proceedings to be had thereupon. And the said party of the first part doth hereby constitute and appoint the said party of the second part, and his assigns, his true and lawful attorney, irrevocable, with power of substitution and revocation, for the use and at the proper costs and charges of the said party of the second part, to ask, demand, and receive, and to sue out executions, and take all lawful ways and means for the recovery of the money due or to become

due on the said judgment; and on payment to acknowledge satisfaction or discharge the same. And attorneys one or more under —— for the purpose aforesaid, to make and substitute, and at pleasure to revoke; hereby ratifying and confirming all that —— said attorney or substitute shall lawfully do in the premises. And the said party of the first part doth covenant —— that he will not collect or receive the same or any part thereof, nor release or discharge the said judgment, but will own and allow all lawful proceedings therein, the said party of the second part saving the said party of the first part harmless of and from any costs in the premises.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the —— day of ——, in the year of our Lord one thousand eight hundred and ——. —— ——. [*Seal.*]

Signed, sealed, and delivered in the presence of —— ——.

**204.** *Assignment of judgment, Illinois form.*

This indenture, made the —— day of ——, one thousand eight hundred and seventy ——, between ——, of ——, State of Illinois, party of the first part, and ——, party of the second part. Whereas, that said party of the first part, ——, on the —— day of ——, one thousand eight hundred and ——, recovered by judgment ——, in the ——, against ——, the sum of ——, now this indenture Witnesseth: That the said party of the first part, in consideration of ——, to him duly paid, has sold, and by these presents does assign, transfer, and set over unto the said party of the second part, and his assigns, the said judgment, and all sum and sums of money that may be had or obtained by means thereof, or on any proceedings to be had thereupon. And the said party of the first part does hereby constitute and appoint the said party of the second part, and his assigns, his true and lawful attorney, irrevocably, with power of substitution and revocation, for the use and at the proper costs and charges of the said party of the second part, to ask, demand, and receive, and to sue out executions, and take all lawful ways for the recovery of the money due or to become due on the said judgment; and on payment to acknowledge satisfaction or discharge the same, and attorneys one or more under —— for the purpose aforesaid, to make and substitute, and at pleasure to revoke; hereby ratifying and confirming all that —— said attorney or substitute shall lawfully do in the premises. And the said party of the first part does covenant, that there is now due on the said judgment the sum of —— and that he will not collect or receive the same, or any part thereof, nor release or discharge the said judgment, but will own and allow all lawful proceedings therein, the said party of the second part saving the said party of the first part harmless of and from any costs in the premises.

In testimony whereof, the party of the first part has hereunto set his hand and seal, the day and year first above written.

Sealed and delivered in presence of ——, ——. [*Seal.*]

——, ——. [*Seal.*]

**205.** *Assignment of patent.*

Whereas, ——, of the city of Chicago, in the county of Cook and State of Illinois, did obtain letters-patent of the United States, No. ——, for ——, certain ——, which letters-patent bear date the —— day of ——, eighteen hundred and ——. And whereas —— is desirous of acquiring an interest therein:

Now, therefore, this indenture Witnesseth: That for and in consideration of the sum of —— dollars, to me in hand paid, the receipt whereof is hereby acknowledged, I have granted, sold, and set over unto the said ——, all the right, title, and interest which I have in the said invention, as secured to me by said letters-patent for, to, and in the ——, and in no other place or places; the same to be held and enjoyed by the said ——, for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters-patent are granted, ——, as fully and entirely as the same would have been held and enjoyed by me had this grant and sale not been made ——.

In testimony whereof, I have hereunto set my hand and affixed my seal, this —— day of ——, A. D. 187——. ——, ——. [*Seal.*]

Sealed and delivered in the presence of —— ——. ——, ——. [*Seal.*]

——, ——.

**206.** *Assignment to creditors—(From Bishop's Burrell on Assignments.)*

This indenture, made this —— day of ——, in the year ——, between ——, of ——, party of the first part, and ——, of ——, party of the second part, Witnesseth: That whereas, the party of the first part is indebted to divers persons in sundry sums of money, which he is unable to pay in full, and is desirous of providing for the payment of the same so far as in his power, by an assignment of all his property for that purpose. Now therefore, the said party of the first part, in consideration of the premises, and of the sum of one dollar, to him paid by the party of the second part, upon the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred, and set over, and by these presents does grant, bargain, sell, transfer, assign, and set over, unto the said party of the second part, his successors and assigns, all and singular the lands, tenements, hereditaments, appurtenances, goods, chattels, stock, promissory notes, debts, claims, demands, property, and effects of every description belonging to the party of the first part, wherever the same may be, except

such property as is exempt by law from levy and sale under execution; to have and to hold the same, and every part thereof, unto the said party of the second part, his successors and assigns, in trust, nevertheless to take possession of the same, and to sell the same with all reasonable dispatch, and to convert the same into money, and also to collect all such debts and demands hereby assigned as may be collectible, and with and out of the proceeds of such sales and collections ——.

1. To pay and discharge all the just and reasonable expenses, costs, and charges of executing this assignment, and of carrying into effect the trust hereby created, together with a lawful commission to the party of the second part for his services in executing said trust.

2. To pay and discharge in full, if the residue of said proceeds is sufficient for that purpose, all the debts and liabilities now due or to grow due from the said party of the first part, with all interest-money due or to grow due; and if the residue of said proceeds shall not be sufficient to pay said debts and liabilities and interest-moneys in full, then to apply the said residue of said proceeds to the payment of said debts and liabilities, ratably and in proportion.

3. And if, after the payment of all the said debts and liabilities in full, there be any remainder of said property or proceeds, to repay and return the same to the said party of the first part, his executors, administrators, and assigns.

And in furtherance of the premises, the said party of the first part does hereby make, constitute, and appoint the said party of the second part his true and lawful attorney, irrevocable, with full power and authority to do all acts and things which may be necessary in the premises to the full execution of the trust hereby created, and to ask, demand, recover, and receive, of and from all and every person or persons, all property, debts, and demands due, owing, and belonging to the said party of the first part, and to give acquittances and discharges for the same, to sue, prosecute, defend, and implead for the same, and to execute, acknowledge, and deliver all necessary deeds, instruments, and conveyances. And the said party of the first part does hereby authorize the said party of the second part to sign the name of the said party of the first part to any check, draft, promissory note, or other instrument in writing which is payable to the order of the said party of the first part, or to sign the name of the party of the first part to any instrument in writing whenever it shall be necessary so to do to carry into effect the object, design, and purpose of this trust.

The said party of the second part doth hereby accept the trust created and reposed in him by this instrument, and covenants and agrees, to and with the said party of the first part, that he will faithfully and without delay execute the trust created according to the best of his skill, knowledge, and ability.

In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

Sealed and delivered in presence of —— ——. —— ——. [*Seal.*] —— ——. [*Seal.*]

STATE OF CALIFORNIA, City and County of San Francisco, } ss.

On this —— day of ——, in the year of our Lord one thousand eight hundred and seventy ——, before me came ——, ——, to me personally known, and known to me to be the persons described in and who executed the above instrument, and each for himself severally acknowledged that he executed the same.

**207.** *Lease, California form.*

This indenture, made the —— day of ——, in the year of our Lord one thousand eight hundred and seventy ——, Witnesseth: that I, ——, of the ——, State of California, lessor, do hereby lease, demise, and let unto, [*description*] to have and to hold, for the term of ——, to wit, from the —— day of ——, 187——, to the —— day of ——, 187——, yielding and paying therefor the rent of —— dollars, gold coin of the United States of America, and the said lessees promise to pay the rent in such —— as follows, to wit: ——, and to quit and deliver up the premises to the lessor or his agent, or attorney, peaceably and quietly, at the end of the term, in as good order and condition (reasonable use and wear thereof, and damages by the elements excepted) as the same are now or may be put into; and to pay the rent as above stated during the term; also the rent as above stated for such further time as the lessee may hold the same, and not make or suffer any waste thereof, nor lease or underlet, nor permit any other person or persons to occupy or improve the same, or make or suffer to be made any alteration therein, but with the approbation of the lessor thereto, in writing, having been first obtained; and that the lessor may enter to view and make improvements, and to expel the lessee if he shall fail to pay the rent as aforesaid, or make or suffer any strip or waste thereof.

And should default be made in the payment of any portion of said rent when due, and for —— days thereafter, the said lessor, his agent or attorney, may re-enter and take possession, and at his option terminate this lease. —— ——. [*Seal.*]

Signed, sealed, and delivered in presence of —— ——. —— ——. [*Seal.*]

**208.** *Lease, California form.*

This indenture, made the —— day of ——, in the year of our Lord one thousand eight hundred and seventy ——, between ——,

of ——, State of California, the party of the first part, and ——, the party of the second part, Witnesseth: That the said party of the first part does by these presents lease and demise unto the said party of the second part ——, with the appurtenances, for the term of ——, from the —— day of ——, A. D. one thousand eight hundred and seventy ——, at the —— rent, or sum of —— dollars, payable in gold coin of the United States of America, —— in advance, on the —— day of each and every month during said term ——. And it is hereby agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to re-enter the said premises and to remove all persons therefrom. And the said party of the second part does hereby covenant, promise, and agree to pay to the said party of the first part the said rent in the manner hereinbefore specified. And not to let or underlet the whole or any part of the said premises without the written consent of the said party of the first part. And that, at the expiration of said term, the said party of the second part will quit and surrender the said premises in as good state and condition as reasonable use and wear thereof will permit (damages by the elements excepted).

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

Signed, sealed, and delivered in the presence of —— ——. —— ——. [*Seal.*] —— ——. [*Seal.*]

**209.** *Lease, California form.*

This indenture, made the —— day of ——, in the year of our Lord one thousand eight hundred and seventy ——, between ——, of ——, State of California, and ——, the party of the second part, Witnesseth: That the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter mentioned, reserved, and contained on the part and behalf of the said party of the second part, —— executors, administrators, and assigns, to be paid, kept, and performed, does by these presents grant, demise, and let unto the said party of the second part, —— executors, administrators, and assigns, all ——. To have and to hold the said premises, with the appurtenances, unto the said party of the second part, his executors, administrators, and assigns, from the —— day of ——, one thousand eight hundred and seventy ——, for and during the full term of —— thence next ensuing, and fully to be complete and ended; yielding and paying therefor unto the said party of the first part, his heirs or assigns ——, during the said term, the —— rent or sum of ——. Provided always, nevertheless, that if the rent above reserved, or any part thereof, shall be in arrear or unpaid on any day of payment whereon the same ought to be paid as aforesaid, or if default shall be made in any of the covenants herein contained, on the part or behalf of the said party of the second part, his executors, administrators, and assigns, to be

paid, kept, and performed, then and from thenceforth it shall and may be lawful for the said party of the first part, his heirs or assigns, into and upon the said premises, and every part thereof, wholly to re-enter, and the same to have again, repossess, and enjoy as in his first and former estate, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. And the said party of the second part, for himself and his heirs, executors, and administrators, does hereby covenant and agree to and with the said party of the first part, his heirs and assigns, that the said party of the second part, his executors, administrators, or assigns, shall and will —— during the said term, well and truly pay, or cause to be paid, unto the said party of the first part, his heirs or assigns, the said rent, on the days and in the manner limited and prescribed as aforesaid for the payment thereof, without any deduction, fraud, or delay, according to the true intent and meaning of these presents; nor lease, nor underlet, nor permit any other persons to occupy or improve the same, or make, or suffer to be made, any alteration therein but with the approbation of the lessor, —— having been first obtained, and that on the last day of said term or other sooner determination of the estate hereby granted, the said party of the second part, his executors, administrators, and assigns, shall and will peaceably and quietly leave, surrender, and yield up unto the said party of the first part, his heirs or assigns, all and singular the said premises in good state and condition, as the same are now or may be put into (reasonable use and wear thereof, and damage by the elements excepted). And the said party of the first part, for himself and his heirs and assigns, does hereby covenant and agree, that the said party of the second part, his executors, administrators, or assigns, paying the said rent and performing the covenants and agreements aforesaid, the said party of the second part, his executors, administrators, and assigns, shall and may at all times during the said term, peaceably and quietly have, hold, and enjoy the said premises, without any manner of let, suit, trouble, or hindrance of or from the said party of the first part, his heirs or assigns.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

Sealed and delivered in the presence of —— ——. —— ——. [*Seal.*]
—— ——. [*Seal.*]

**210.** *Lease,-short form, as in Ohio.*

This lease, made this —— day of ——, one thousand eight hundred and ——, between ——, of the State of Ohio, of the first part, and ——, of the second part, Witnesseth: That the said party of the first part has letten and by these presents doth grant, demise, and to farm let unto the said party of the second part, —— with the appurtenances, for the term of ——, from the —— day of ——, one thousand eight hundred and ——, at the yearly rent or sum of ——, to be paid in equal —— payments. And it is agreed

that if any rent shall be due and unpaid, or if any default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to re-enter the said premises, and the same to have again, repossess, and enjoy. And the said party of the second part doth covenant to pay to the said party of the first part the said yearly rent, as herein specified. And that at the expiration of the said term, the said party of the second part will quit and surrender the premises hereby demised, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted. And the said party of the first part doth covenant that the said party of the second part, on paying the said yearly rent, and performing the covenants aforesaid, shall and may peaceably and quietly have, hold, and enjoy the said demised premises for the term aforesaid.

In witness whereof, the said parties have hereunto set their hands and seals, on the day and year first above written.

Signed, sealed, and acknowledged in presence of us: —— ——. —— ——. [*Seal.*]
—— ——. —— ——. [*Seal.*]
—— ——. —— ——. [*Seal.*]
—— ——. —— ——. [*Seal.*]

**211.** *Lease, long form, as in Ohio.*

This lease, made this —— day of ——, one thousand eight hundred and ——, between ——, of the first part, and ——, of the second part, Witnesseth: That said party of the first part, in consideration of the rents and covenants hereinafter contained, and by said party of the second part, and his assigns to be paid and performed, does hereby grant, demise, and lease to the said party of the second part, his executors, administrators, and assigns, the premises described as follows: ——, to have and to hold the same, with the appurtenances, unto the said party of the second part, his executors, administrators, and assigns, from ——, for and during the full term of —— next ensuing, and fully to be completed and ended ——, yielding and paying therefor, during the said term, ——. Provided, however, that if said rent, or any part thereof, shall remain unpaid for —— days after it shall become due, and without demand made therefor; or if said lessee shall assign this lease, or underlet said leased premises, or any part thereof, or if said lessee's interest therein shall be sold under execution, or other legal process, without the written consent of said lessor, his heirs or assigns first had; it shall be lawful for said lessor, his heirs or assigns, into said premises to re-enter, and the same to have again, repossess, and enjoy, as in his first and former estate; and thereupon this lease, and everything therein contained on the said lessor's behalf to be done and performed, shall cease, determine, and be utterly void. And said lessee, for his executors, administrators, and assigns, covenants and agrees with said lessor, his heirs and assigns, as follows, that is to say: that said lessee will pay said rents in manner aforesaid, except said premises shall be destroyed or

rendered untenantable by fire, or unavoidable accident; that he will not do or suffer any waste therein; that he will not assign this lease, or underlet said premises, or any part thereof, without the written consent of said lessor, and that at the end of said term he will deliver up said premises in as good order and condition as they now are, or may be put by said lessor, reasonable use and ordinary wear and tear thereof, and damage by fire and other unavoidable casualty excepted; and further, that for the said rents, ——, to be paid by said lessee and assigns, a lien is hereby reserved upon the premises hereby leased, and the interest of said lessee and assigns in and to the same, in favor of said lessor, heirs and assigns, prior and preferable to any and all other liens thereupon whatsoever. And said lessor, for his heirs, executors, administrators, and assigns, covenants and agrees with said lessee, his executors and administrators, that said lessee, paying the rents, and observing and keeping the covenants of this lease on his part to be kept, shall lawfully, peaceably, and quietly hold, occupy, and enjoy said premises, during said term, without any let, hindrance, ejection, or molestation by said lessor, or his heirs, or any person or persons lawfully claiming under them.

In witness whereof, the said parties hereto have hereunto set their hands and seals, on the day and year first above written.

Signed, sealed, and acknowledged in presence of us: —— ——. [*Seal.*]
—— ——. [*Seal.*]
—— ——. [*Seal.*]
—— ——. [*Seal.*]

**212.** *Lease with security.*

It is hereby agreed, between ——, of ——, party of the first part, and ——, of ——, party of the second part, as follows: The said party of the first part, for and in consideration of the rents and covenants herein specified, does hereby let and lease to the said party of the second part the following described premises, situate and being in the ——, of ——, in the county of —— and State of ——, [*here describe premises*] for the term of —— from and after the ——, on the terms and conditions hereinafter mentioned, to be occupied for ——; provided, that in case any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part, or his certain attorney, to re-enter into and repossess the said premises, and the said party of the second part, and each and every other occupant, to remove and put out. And the said party of the second part —— does hereby hire the said premises for the term of —— as above mentioned, and does covenant and promise to pay to the said party of the first part the annual rent of —— dollars, in —— installments, to wit: The first installment to be paid on the ——. And also that he, the said party of the second part, will, at his own expense, during the continuance of this lease, keep the said premises and every part thereof in as good repair, and will not re-lease or assign this lease, or sublet said premises, or any portion

thereof, to any person or persons whomsoever without the written consent of the party of the first part, and, at the expiration of the term, yield and deliver up the same in like condition as when taken, reasonable use and wear thereof and damages by the elements excepted. And the said party of the second part doth hereby covenant and agree, that all goods, wares, and merchandise, household furniture, fixtures, or other property which are or shall be placed in or on said premises by him, shall be liable, and this lease shall hereby constitute a lien or mortgage on said property, to secure the rent due or to grow due on this lease. And I hereby authorize and empower the said party of the first part, in case any default is made in the payment of the rent above specified, or any of the covenants herein contained are broken, and the said party of the first part may enter upon said premises, or take any of said mortgaged property wherever the same may be found, and sell and dispose of the same in the same manner as in the case of chattel mortgage on default thereof, giving six days' notice of the time and place of such sale, said notice to be posted in —— public places in the said —— of ——, for the best price he can obtain for the same, and retain sufficient money to pay any rent due hereon, or to grow due hereon, together with the costs of such sale; and the said party of the second part hereby waives all benefit of any exemption law of this State in reference to the sale of said personal property for rent. And the said party of the first part does covenant that the said party of the second part, on paying the aforesaid installments and performing all the covenants aforesaid, shall and may peaceably and quietly have, hold, and enjoy the said demised premises for the term aforesaid.

Witness our hands and seals this —— day of ——, 187——.

—— ——. [*Seal.*]

—— ——. [*Seal.*]

**213.** *Assignment of lease.*

Know all men by these presents, that I, ——, for and in consideration of the sum of —— dollars, to me duly paid by ——, the receipt whereof is hereby acknowledged, have sold, and by these presents do grant, convey, assign, transfer, and set over unto the said ——, a certain indenture of lease, bearing date the —— day of ——, in the year one thousand eight hundred and seventy——, made by ——, and recorded in Liber No. ——, p. ——, of conveyances in the office of the recorder [or clerk] of —— county; together with all and singular the premises therein mentioned and described and the buildings thereon, with the appurtenances; the said premises being described as follows, to wit: [*here give description of premises.*] To have and to hold the same unto the said ——, and his assigns, from the —— day of ——, for and during all the rest, residue, and remainder yet to come of and in the term of —— years mentioned in the said indenture of lease, subject to the conditions and provisions therein also mentioned. And the said

grantor does hereby covenant, grant, promise, and agree to and with the said ——, and his assigns, that the said assigned premises now are free and clear of and from all former and other gifts, grants, bargains, sales, leases, judgments, executions, back rents, taxes, assessments, and incumbrances whatsoever.

In witness whereof, the said grantor has hereunto set his hand and seal this —— day of ——, in the year of our Lord one thousand eight hundred and seventy——. —— ——. [*Seal.*]

Signed, sealed, and acknowledged in presence of us: —— ——. —— ——. [*Seal.*]

## 214. *Assignment of lease, New York form.*

Know all men by these presents, that I, ——, of the city of ——, county of —— and State of New York, in consideration of the sum of —— dollars, lawful money of the United States, to me paid, the receipt whereof is hereby acknowledged, have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over unto ——, of the —— county of —— and State aforesaid, all my right, title, and interest in and to a certain indenture of lease, bearing date the —— day of ——, in the year one thousand eight hundred and seventy——, made by —— of the said city of ——, to me, the said ——, of a certain lot and buildings situate, [*here insert description in lease*] with all and singular the premises therein mentioned and described, together with the appurtenances, which said lease was duly recorded in the register's office of the city and county of New York, on the —— day of ——, 187——, in Liber —— of conveyances, at page ——, to have and to hold the same unto the said ——, his heirs, executors, administrators, and assigns, to his and their own proper use, benefit, and behoof, from the —— day of ——, 187——, for and during all the rest, residue, and remainder of the term of —— years, described in the said lease; subject, nevertheless, to the rents, covenants, conditions, and provisions in said lease mentioned.

In witness whereof, I have hereunto set my hand and seal, this —— day of ——, 187——. —— ——. [*Seal.*]

Sealed and delivered in presence of —— ——.

## 215. *Will, Ohio form.*

The last will and testament of ——, of ——, State of Ohio. In the name of the benevolent Father of all: I, the said ——, being of sound and disposing mind and memory, considering the uncertainty of the continuance of life, and desiring to make such disposition of my worldly estate as I deem best, do make, publish, and declare this to be my last will and testament: hereby revoking and annulling any and all former will or wills whatsoever by me made.

First.—I desire all my just debts and funeral expenses to be paid as soon as possible after my decease.

Second.—I give and bequeath ——.

I nominate and appoint —— to be the executor of this will ——.

In witness whereof, I have hereunto set my hand and seal, this —— day of ——, in the year eighteen hundred and ——.

—— ——. [*Seal.*]

Signed, sealed, and acknowledged by —— as and for —— last will and testament, in our presence, and subscribed and attested by us, as witnesses, in —— presence, and at —— request.

—— ——.

—— ——.

**216.** *Will, California form.*

In the name of God, Amen. I, ——, of the City and County of San Francisco, State of California, of the age of —— years, and being of sound and disposing mind, and not under any restraint, or the influence or representation of any person whatever, do make, publish, and declare this my last will and testament, in manner following, that is to say:

First.—I direct that my body be decently buried, without undue ceremony or ostentation, but with proper regard to my station and condition in life, and the circumstances of my estate.

Secondly.—I direct that my executor, hereinafter named, as soon as he has sufficient funds in his hands, pay my funeral expenses, and the expenses of my last sickness.

Thirdly, fourthly, etc.

Lastly.—I hereby appoint —— the executor of this my last will and testament, hereby revoking all former wills by me made.

In witness whereof, I have hereunto set my hand and seal this —— day of ——, in the year of our Lord one thousand eight hundred and ——.

—— ——. [*Seal.*]

The foregoing instrument, consisting of —— page beside this, was, at the date thereof, by the said ——, signed and sealed and published as, and declared to be, his last will and testament, in presence of us, who, at his request, and in his presence, and in the presence of each other, have subscribed our names as witnesses thereto.

——, residing at ——.

——, residing at ——.

**217.** *Notary's bond.*

Know all men by these presents, that we, R. H. Stinton, as principal, and C. K. Garrison, Austin E. Smith, and George H. Hossefross, as sureties, all of the City of San Francisco, State of California, the said Stinton in the sum of five thousand dollars, and the said sureties in the following-named sums, viz: C. K. Garrison

for five thousand dollars, and A. E. Smith and George H. Hossefross for the sum of twenty-five hundred dollars each, making, in the aggregate, the whole penal sum of five thousand dollars, lawful money of the United States, to be paid to the said State of California; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twenty-sixth day of March, A. D. 1874.

The condition of the above obligation is such, that whereas, John B. Weller, Governor of California, has appointed and commissioned the above-bounden R. H. Stinton a notary public in and for the City and County of San Francisco, by commission dated the third day of March, A. D. 1874: Now, therefore, if the said R. H. Stinton shall well and truly perform the duties of a notary public, as aforesaid, during his incumbency of said office under and by virtue of the commission aforesaid, according to law, and shall faithfully discharge all duties which may be required of him by any law enacted subsequently to the execution of this bond, then this obligation shall become void; otherwise, to remain in full force and effect.

Witness our hands and seals, this twenty-sixth day of March, A. D. 1874.

R. H. STINTON. [L. S.]
C. K. GARRISON. [L. S.]
A. E. SMITH. [L. S.]
GEO. H. HOSSEFROSS. [L. S.]

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